TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 59

NORTHERN PACIFIC RAILWAY COMPANY AND
NORTHWESTERN IMPROVEMENT COMPANY,
APPELLANTS.

vs.

UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

FILED DECEMBER 21, 1956
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INDEX

	Original	Print
Record from the U.S.D.C., Western District of Washington	1	1
Complaint	1	1
Answer	16	12
Request for admissions under Rule 36	30	23
Appendix I—Timber Land Sales	45	41
Appendix II—Sales of timber	54	47
Appendix III—Leases of mineral lands	70	60
Appendix IV—Northwestern Improvement Company Contracts	77	64
Northern Pacific Railway Company-Wyoming Contracts	78	65
Northern Pacific Railway Company-Montana Contracts	79	66
Appendix V—Oil and Gas Permits and Leases	83	70
Appendix VI—Coal Leases and Permits	85	72
Appendix VII—Iron Ore Leases	88	76
Stipulation re taking of depositions	89	78

RECORD PRESS, PRINTERS, NEW YORK, N. Y. AUGUST 15, 1957

Record from the U.S.D.C., Western District of Washington—Continued	Original	Print
Defendants' response to plaintiff's request for admissions under Rule 36	90	78
Exhibit "A"—Timber Land Sales	103	89
Exhibit "B"—Timber Sales	105	91
Exhibit "C"—Mineral Land Leases	111	97
Stipulation re sources of fact information and related matters	113	99
Order approving stipulation	117	102
Supplemental response to plaintiff's request for admissions under Rule 36	118	103
Appendix:		
Timber and Timber Land Sales Forms	129	114
Mineral Land Lease Forms	165	138
Coal Land Lease Forms	172	143
Motion for summary judgment	174	144
Stipulation re taking depositions of various witnesses	176	145
Affidavit of R. G. Lindgren	182	149
Stipulation as to use of copies in lieu of original documents; As to certain information in connection with industrial leases and grazing leases	185	151
Exhibit "A"—Preceding Leases with Present Lessees	188	153
Exhibit "B":		
Grazing Leases Issued to Sylvan and Peter Pauly	190	155
Grazing Leases Issued to A. W. Bradshaw and Bradshaw Land & Livestock Company	192	157
Grazing Leases Issued to W. R. Woodson	194	159
Grazing Leases Issued to M. C. Simpson	196	161
Grazing Leases Issued to George N. Williamson	198	164
Grazing Leases Issued to Wallace Ulmer	199	165
Grazing Leases Issued to C. A. Mallett	201	167
Grazing Leases Issued to Mrs. Susan Haughian	203	169
Grazing Leases Issued to Madison Valley Stock Ass'n	205	171
Grazing Leases Issued to George Davidson	209	175
Grazing Leases Issued to Frank Carey	213	179
Grazing Leases Issued to William Magelssen	215	181
Exhibit "C"—Grazing Lease Information for Anti-Trust Suit Washington and Oregon	217	183
Decision, Boldt, J.	219	184
Motion for reargument and reconsideration	228	192
Certificate of Clerk, U.S. District Court to supplemental record on appeal to Supreme Court of the United States	229	193
Defendants' proposed partial final judgment (cover page only)	230	194
Partial final judgment	231	194
Plaintiff's proposed findings of fact and conclusions of law (cover page only)	237	198

Record from the U.S.D.C., Western District of Washington—Continued

	Original	Print
Findings of fact and conclusions of law	238	199
Transcript of Court's oral decision denying motion for reconsideration	252	210
Notice of appeal to the Supreme Court of the United States	262	215
Clerk's certificate (omitted in printing)	271	219
Order noting probable jurisdiction	274	219

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON NORTHERN DIVISION

Civil No. ....

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY AND NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

COMPLAINT—Filed May 26, 1949

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges upon information and belief as follows:

I

Jurisdiction and Venue

1. This Complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, in order to prevent and restrain violations by defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The alleged unlawful acts and violations hereinafter described have been conceived, in part, and have been carried out and made effective, and are being carried out and made effective in part within the Western District [fol. 2] of Washington, Northern Division, and many of the unlawful acts pursuant thereto have been performed

and are being performed by the defendants and their respective representatives within the Western District of Washington, Northern Division. Each of the defendants has offices, transacts business, and is found within the Western District of Washington, Northern Division. The interstate trade and commerce as hereinafter described are carried on in part within the Western District of Washington, Northern Division.

II

Definition of Terms

3. The term "Northern Pacific Railroad Owned Lands," as used herein, means any and all lands or interests in lands which are owned or leased by the Northern Pacific Railway Company, its subsidiaries and predecessors, including timber lands, mineral bearing lands, oil and gas lands, coal and clay lands, grazing lands, and industrial sites.

4. The term "Northern Pacific Railroad Controlled Lands," as used herein, means any and all lands or real estate formerly owned, or whether ever owned, by the Northern Pacific Railroad Company which are encumbered with traffic clauses.

5. The term "traffic clause," as used herein, means an agreement relating to the sale, lease, or use of Northern Pacific owned or Northern Pacific controlled lands, under the terms of which the grantee is required to ship or have shipped over the lines of the Northern Pacific Railway Company any and all products of whatever nature coming [fol. 3] from Northern Pacific owned and Northern Pacific controlled lands.

6. The term "Controlled Products," as used herein, shall mean products taken from, or raised upon, or manufactured upon Northern Pacific owned or Northern Pacific controlled lands, as well as incoming products shipped to such lands from points located outside such lands.

III

Description of Defendants

7. Northern Pacific Railway Company (referred to hereinafter as Northern Pacific) is hereby made a defendant herein. It is a corporation organized under the laws of the State of Wisconsin on March 16, 1870, under the name of Superior and St. Croix Railroad Company. Its name was changed to Northern Pacific Railway Company on June 10, 1896, when it acquired the properties of the then bankrupt Northern Pacific Railroad Company, which was chartered by a special act of Congress (13 Stat. 365) on July 2, 1864.

8. Northwestern Improvement Company is hereby made a defendant herein. It is a Delaware corporation which, in 1942, became the successor in interest to a wholly-owned subsidiary of Northern Pacific which was incorporated in New Jersey on October 19, 1897, under the name of Northwestern Improvement Company, for the purpose of acquiring certain properties of the Railroad. On September 25, 1942, the property and assets of the New Jersey corporation were transferred to the Absaroka Oil Development Company, a wholly-owned subsidiary of defendant, Northern Pacific, incorporated under [fol. 4] the laws of the State of Delaware. On that date, the name of the Absaroka Oil Development Company was changed to Northwestern Improvement Company. Defendant Northwestern Improvement Company is a wholly-owned subsidiary of defendant Northern Pacific.

IV

Nature of Interstate Trade and Commerce Involved

9. Northern Pacific Railroad Company, the predecessor of defendant Northern Pacific Railway Company, was a land grant railroad. By Act of Congress of July 2, 1864 (13 Stat. 365) it was chartered to construct a railroad from Lake Superior to Puget Sound, with a branch by way of the Columbia River to Portland, Oregon. In aid of this construction, a land grant was made by the Federal Gov-

ernment of every alternate section of public land, not mineral, in the amount of twenty sections per mile on each side of the railroad line, through territories, and ten sections per mile through States. In the event some of this land should be found to have been granted already, or sold, or occupied, the company was privileged to select in lieu thereof alternate odd-numbered sections located not more than ten miles beyond the limits of the original grant. In lieu of mineral lands, the Railroad was given the privilege of selecting land suitable for agricultural purposes provided land so selected was located within fifty miles of the Railroad line.

10. By the Act of Congress of May 31, 1870 (16 Stat. 378) the Northern Pacific Railroad Company was authorized to construct the mail line by way of the Columbia River to Portland, Oregon, and a branch across the Cascade Mountains to Puget Sound. By act of Congress in 1869 (15 Stat. 346) the Northern Pacific Railroad Company was authorized [fol. 5] to construct a line between Portland, Oregon, and Puget Sound. This authorization provided no land grant. However, the Act of Congress of May 31, 1870, made a grant of land to the Railroad in connection with the construction of the line between Portland, Oregon, and Puget Sound upon the same terms as those contained in the original grant of July 2, 1864. In addition to the land grants already described, the Acts of 1864 and 1870 granted the Railroad a right-of-way two hundred feet in width on each side of the definite location of the railroad line.

11. The Northern Pacific Railroad Company completed its line between Lake Superior and Puget Sound in August 1883. Northern Pacific now operates and controls approximately 6,900 miles of railroad extending from Minneapolis and St. Paul to the Pacific Northwest, passing through the northern tier of States bordering on Canada. States furnished with transportation services and facilities by Northern Pacific include Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon. The lines of the Northern Pacific substantially parallel the lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

12. Under the land grants made by the Acts of Congress of 1864 and 1870, Northern Pacific acquired approximately 40,000,000 acres of land in the States in which its lines now operate. Defendant Northern Pacific, or its predecessors, have sold approximately 36,000,000 acres of such land. The lands sold were sold subject to a reservation in the vendor, its successors and assigns forever, of all minerals of any nature whatsoever, together with the right to use [fol. 6] such of the surface as might be necessary for exploring and mining or otherwise extracting and carrying away the same. Defendant Northern Pacific and defendant Northwestern Improvement Company still own approximately 4,000,000 acres of such lands. The lands so sold by defendant and its predecessors, and the lands still owned by defendants contain timber, iron ore, coal, oil, clay, and other natural resources. In addition, a part of such lands have been used as grazing lands and a part devoted to industrial developments of various kinds. In addition to the sale of lands, defendants are engaged in the sale of rights to use certain of said lands still owned by them for grazing, for the location of industrial sites, and in the sale of rights to remove therefrom timber, oil, gas, metals, clay, coal, other minerals, and other products. Defendants have reserved mineral rights in a substantial part of the lands sold by them.

13. A substantial part of the approximately 36,000,000 acres of land sold by defendants has been sold subject to so-called "traffic clauses" under the terms of which the grantee agrees to ship or to have shipped over the lines of Northern Pacific any and all products and commodities coming from or delivered to such lands. In addition, a substantial part of the remaining 4,000,000 acres still owned by defendants is leased for various purposes to others. These leases are also subject to the same type of "traffic clauses" as the land which has been sold.

14. Many commodities produced on or derived from, or distributed through the use of, lands now or formerly owned by defendants, and many products manufactured from such commodities are sold and shipped in interstate commerce. These commodities include, but are not limited to, timber,

lumber, millwork, plywood, pulp wood, paper, coal, oil, gas, [fol. 7] metals, minerals, animals and animal products, and a variety of manufactured products. Many products, including a great variety of manufactured products, machinery, foodstuffs, mining and lumbering equipment and supplies, are shipped in interstate commerce from other states to states in which lands owned and formerly owned by defendants are located.

15. The defendant Northern Pacific is engaged in the business of transporting commodities and products in interstate commerce. Many of the commodities and products refered to hereinbefore are transported in interstate commerce by defendant Northern Pacific. Means of transportation other than the lines of defendant Northern Pacific are available for the transportation of a substantial part of said commodities and products during all or a part of their interstate shipment, including the railroad lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numerous motor freight lines, and steamship lines. Such carriers are in competition with, or, but for the illegal conduct hereinafter described, would be in active competition with defendant Northern Pacific for the transportation of said commodities and products.

V

Offenses Charged

16. For many years prior to the date of the filing of this Complaint, the defendants, each well knowing all the matters and things hereinbefore alleged, and continuing thereafter up to and including the date of the filing of this Complaint, have been and are now engaged in the making of contracts and in a conspiracy to make contracts to restrain [fol. 8] unreasonably, and have conspired and combined to monopolize and have attempted to monopolize the interstate trade and commerce involved in the business of transporting commodities and products shipped from and in transporting commodities and products shipped to persons and concerns occupying both Northern Pacific Railroad owned lands and Northern Pacific controlled lands, all in violation

of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended (15 U.S.C.A. Secs. 1 and 2), commonly known as the Sherman Act. Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for is granted.

17. The aforesaid contracts in restraint of trade, the combination and conspiracy in restraint of trade, and the monopolization and attempts to monopolize said interstate trade and commerce, have consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants

a. Require grantees of rights in or to the use of Northern Pacific owned and Northern Pacific controlled lands to agree to supply railroad traffic to Northern Pacific;

b. Require said grantees, under the terms of traffic clauses, to agree to do, and to do, the following:

(1) To ship or cause to be shipped over the lines of Northern Pacific commodities raised or produced on or coming from Northern Pacific owned or controlled lands;

[fol. 9] (2) To ship or cause to be shipped over the lines of Northern Pacific, products manufactured in whole or in part from commodities raised or produced or coming from Northern Pacific owned or controlled lands;

(3) To ship or cause to be shipped over the lines of Northern Pacific, commodities raised or produced on or coming from lands other than Northern Pacific owned or controlled lands in which the grantees have a right or interest;

(4) To ship or cause to be shipped over the lines of Northern Pacific products manufactured in whole or in part from commodities raised or produced on or coming from lands other than

Northern Pacific owned or controlled lands in which the grantees have a right or interest;

(5) To ship or cause to be shipped over the lines of Northern Pacific products and commodities shipped to the grantees;

(6) To offer to sell or otherwise dispose of and to sell or otherwise dispose of commodities raised or produced on or coming from Northern Pacific owned or controlled lands and lands other than Northern Pacific owned and controlled lands in which the grantees have a right or interest and products manufactured in whole or in part from [fol. 10] said commodities, to vendees designated by defendants;

(7) To ship or cause to be shipped over the lines of Northern Pacific an equivalent amount of traffic through the transportation over Northern Pacific lines of commodities originating from other sources, in lieu of commodities raised or produced from Northern Pacific owned or controlled lands in which the grantees have a right or interest;

(8) To route shipments of commodities and products over the lines of Northern Pacific in such a way as to give Northern Pacific the longest possible haul;

(9) To obtain from vendees of commodities raised or produced or coming from Northern Pacific owned or controlled lands and lands other than Northern Pacific owned and controlled lands in which such grantees have a right or interest and products manufactured in whole or in part from said products, an agreement that said vendees will ship over the lines of Northern Pacific [fol. 11] said commodities and products, and products manufactured by said vendees in whole or in part therefrom;

(10) To induce and persuade vendees of commodities raised or produced or coming from Northern

Pacific owned or controlled lands and lands other than Northern Pacific owned and controlled lands in which said grantees have a right or interest, and products manufactured in whole or in part therefrom, to ship over the lines of Northern Pacific said commodities and products and products manufactured by said vendees in whole or in part therefrom, or, in lieu thereof, to present to Northern Pacific an equivalent amount of traffic by the transportation of other commodities over the lines of Northern Pacific;

(11) To supply commodities to those vendees who are willing to ship their products over the lines of Northern Pacific;

(12) To keep records and allow defendants access thereto for the purpose of enabling defendants to police and enforce the foregoing requirements set out in the various sub-divisions of sub-paragraph (b) of this paragraph.

c. Threaten to refuse and refuse to grant rights in or to the use of Northern Pacific owned lands to grantees who refuse to comply with some or all of the requirements set forth in sub-paragraph (b) of this paragraph;

d. Agree with manufacturers who consent to ship their products over the lines of Northern Pacific that defendants will direct or cause grantees of rights in or to the use of Northern Pacific owned and controlled [fol. 12] lands to supply commodities to such manufacturers for processing or manufacture.

VI

Effects of Violations

The aforesaid contracts, combination and conspiracy to restrain trade, and the monopolization and attempted monopolization by defendants have had the following effects as intended by defendants:

1. Northern Pacific has secured a substantial monopoly of the transportation of products and commodities coming from and produced on Northern Pacific owned and controlled lands;

2. Northern Pacific has secured a substantial monopoly of the transportation of products and commodities coming from and produced on lands other than Northern Pacific owned and controlled lands in which grantees of Northern Pacific owned and controlled lands have a right or interest;

3. Defendants have secured a monopoly control over the sale or other disposition of substantial quantities of commodities and products which they do not own;

4. Grantees of rights and interests in Northern Pacific owned and controlled lands have been deprived of a free choice as to both the means of transportation to be used and of markets in which to sell commodities and products coming from such lands;

5. Grantees of rights and interests in Northern Pacific owned and controlled lands who have interests and rights in lands other than Northern Pacific owned
[fol. 13] and controlled lands have been deprived of a free choice as to both the means of transportation to be used as well as the markets in which to sell commodities and products coming from lands other than Northern Pacific owned and controlled lands;

6. Subsequent vendees of products and commodities sold by grantees of rights and interests in Northern Pacific owned and controlled lands have been deprived of the right to dispose of such products to buyers in markets of their own selection as well as of the right to select their means of transportation for such products;

7. Other buyers and potential buyers of said products and commodities who buy and sell in markets which are not served by the lines of the Northern Pacific are deprived of the right to purchase such products and commodities in a free market;

8. Competing railroads and competing motor truck and steamship lines have been deprived of an opportunity to compete in an open market for the business of transporting products and commodities coming from Northern Pacific owned and controlled lands as well as lands other than Northern Pacific owned and controlled lands in which grantees of defendants have rights or interests.

[fol. 14]

VII

Prayer

Wherefore, the Plaintiff prays:

1. That the Court adjudge and decree that each of the contracts, as well as the combination and conspiracy in restraint of interstate trade and commerce, and the monopolization and attempts to monopolize the interstate trade and commerce described herein, are illegal and are in violation of Sections 1 and 2 of the Sherman Act.

2. That each and every one of the contracts under the terms of which the grantees of Northern Pacific owned and controlled lands are required to ship via Northern Pacific lines, products coming from and products shipped to such lands, as well as products coming from or shipped to lands other than Northern Pacific owned and controlled lands, be cancelled forthwith.

3. That defendants be perpetually enjoined and restrained from entering into any contract, agreement, or understanding with grantees of Northern Pacific owned or controlled lands under the terms of which such grantees are deprived in any way of either a free choice of transportation medium or of markets for products coming from or shipped to Northern Pacific owned or controlled lands, or from lands other than Northern Pacific owned or controlled lands in which grantees of Northern Pacific owned and controlled lands have an interest.

4. That the plaintiff recover the costs and disbursements of this suit.

5. That plaintiff shall have such other and further relief as the Court shall deem just and proper.

[fol. 15] Philip Marcus, Special Assistant to the Attorney General.

Charles L. Whittinghill, Aute L. Carr, Special Attorneys.

Tom C. Clark, Attorney General, Herbert A. Bergson, Assistant Attorney General, Holmes Baldridge, Special Assistant to the Attorney General.

J. Charles Dennis, United States Attorney.

[fol. 16] [File endorsement omitted]

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Civil Action No. 2277

[Title omitted]

ANSWER OF DEFENDANTS, NORTHERN PACIFIC RAILWAY COMPANY AND NORTHWESTERN IMPROVEMENT COMPANY—Filed November 22, 1949

Come now defendants, Northern Pacific Railway Company and Northwestern Improvement Company, and make this answer to plaintiff's complaint:

First Defense

1. Answering paragraphs 1 and 2 of the complaint, defendants admit that each of them has offices, transacts business and is found within the Western District of Washington, Northern Division, and deny the remaining averments thereof.

2. Answering paragraphs 3, 4, 5 and 6 of said complaint, defendants admit that in its complaint plaintiff has used the terms mentioned in said paragraphs as therein defined, but deny that said terms as so defined are appropriate to describe either past or present land holdings of defendants or either of them, the products thereof, or any agreements made by defendants or either of them with respect thereto.

3. Answering paragraphs 7 and 8 of the complaint, defendants admit the averments thereof except for minor [fol. 17] inaccuracies in certain of the dates therein set forth.

4. Answering paragraphs 9 and 10 of the complaint, defendants admit that plaintiff has pleaded with substantial accuracy certain of the provisions of said Act of July 2, 1864, the Joint Resolution of April 10, 1869, and the Joint Resolution of May 31, 1870, except that it has failed to state that the right of way therein granted was over public lands only. For a full and correct statement of the terms of said Acts of Congress, defendants beg to refer to said Act and said Joint Resolutions themselves.

5. Answering paragraph 11 of the complaint, defendants admit the averments thereof except that they allege that Northern Pacific now operates and controls a total of 6,888.6 miles of railroad within the States of Wisconsin. Minnesota, North Dakota, Montana, Idaho, Washington and Oregon, and that the railroad of Northern Pacific, extending from Minneapolis and St. Paul to the Pacific Northwest, was constructed and placed in operation long before the construction of the lines of Great Northern Railway Company and Chicago, Milwaukee, St. Paul & Pacific Railroad Company between said points.

6. Answering paragraph 12 of the complaint, defendants allege that under the land grants made by the Act of Congress of July 2, 1864, and the Joint Resolution of May 31, 1870, referred to in said paragraph, Northern Pacific acquired 39,494,391.79 acres of land, of which approximately 39,400,000 acres were in the States in which [fol. 18] its lines now operate; that prior to January 1, 1949, defendant Northern Pacific and its predecessor sold 37,216,767.90 acres of such land; that approximately 21,000,000 acres thereof were sold without reservation or exception of minerals of any nature whatsoever, and that defendants have heretofore released by quitclaim deed all exceptions or reservations of minerals in approximately 9,500,000 acres thereof which were originally sold subject to exception or reservation of minerals; that defendants

still own, exclusive of land classified by the Interstate Commerce Commission as "land for transportation purposes", approximately 2,700,000 acres of land including, in addition to lands acquired under said Act and Joint Resolution, lands acquired by purchase and lands acquired under other land grant Acts; that the lands heretofore sold by defendants and their predecessors and the lands still owned by them are of various types, many being farm lands, some containing timber, some containing iron ore. and some containing coal, oil, clay or other natural resources; that except for certain tracts of land which are being held as a source of supplies for maintenance and operation of the railroad of defendant Northern Pacific, and certain lands known or supposed to contain oil, gas or other valuable minerals, defendants are and at all times have been engaged in finding purchasers for said lands, and have not generally engaged in the leasing of said lands for grazing purposes except pending the sale thereof, and with minor exceptions have not engaged in the sale of rights to use any of said lands for the location of indus- [fol. 19] trial sites; that defendants are engaged in the sale of the standing timber and the rights to remove timber, oil, gas, metals, clay, coal and other natural resources from lands or interests therein still owned by them. Except as in this paragraph admitted, or otherwise alleged, defendants deny each of the averments contained in paragraph 12 of said complaint.

7. Answering paragraph 13 of the complaint, defendants deny the averments thereof except that they admit that a substantial part of the approximately 2,700,000 acres of land still owned by them is leased for various purposes to others.

8. Answering paragraph 14 of the complaint, defendants admit the averments thereof.

9. Answering paragraph 15 of the complaint, defendants admit the averments thereof except that they deny that any conduct on the part of them or either of them prevents or unreasonably restrains active competition by the carriers referred to in said paragraph for the transporta-

tion of any of the commodities or products therein mentioned, and they allege that said carriers are and at all times have been in active competition with the defendant, Northern Pacific, for the transportation of said commodities and products.

10. Answering paragraphs 16 and 17 of the complaint, defendants deny each and every averment in said paragraphs contained.

[fol. 20] 11. Answering the paragraph, including sub-paragraphs 1 to 8, inclusive, thereof, under the heading "Effects of Violations", pages 12 and 13 of the complaint, defendants deny each and every averment contained in said paragraph and sub-paragraphs.

Second Defense

1. Preferential routing agreements, under the terms of which a shipper covenants and agrees with a transportation company that he will use its line for the transportation of all his shipments destined to or originating at points on or reached via its line, provided it shall not charge a higher rate than that offered by any competing line, have been usual and customary throughout the history of railroads. Such agreements are normal, natural and reasonable. They promote the construction of transportation facilities, further the legitimate interests of the transportation company, and enable it to maintain and provide adequate transportation service. They do not restrain competition, but on the contrary insure continuing competition as to rates and service.

2. Prior to the construction of defendant Northern Pacific's line of railroad from Lake Superior to Puget Sound, the territory subsequently traversed thereby was an undeveloped and substantially uninhabited region of the United States, consisting of great stretches of homeless prairies, trackless forests and unexplored mountains. In order to bring about the construction and operation of a [fol. 21] line of railroad extending through that territory and thus to encourage the settlement and facilitate the development of that region, promote commerce and estab-

lish a convenient highway to and from the Pacific Coast for the transportation of mails, troops, munitions and public stores, with all the resultant advantages to the Government and the public, the Congress of the United States enacted the Act of July 2, 1864 (13 Stat. 365), and the Joint Resolution of May 31, 1870 (16 Stat. 378), embodying a proposal to Northern Pacific's predecessor that, if it would undertake and perform that vast work, it should receive in return the lands comprehended in the grant. Northern Pacific Railroad Company, defendant's predecessor, accepted the proposal and at enormous cost constructed the road and put the same in operation. For many years thereafter, defendant Northern Pacific and its predecessor transported the mails and property and troops of the United States thereover at reduced rates, pursuant to the provisions of Section 11 of said Act of July 2, 1864, and various Acts of Congress passed in pursuance thereof which provided deductions, account land grant, from the commercial rates applicable to such Government transportation. Through such land grant deductions plaintiff has obtained full payment for the lands so granted. Whatever advantage the ownership of said lands gave to Northern Pacific in competition with other transportation agencies subsequently entering the field was earned by construction of its railroad and by performance of the obligations imposed upon it by the Act of July 2, 1864, [fol. 22] and was reasonably within the contemplation of said granting Act. By reason of the facts hereinabove set forth, defendants and their predecessors were and are reasonably and equitably entitled to secure agreements for preferential routing of traffic via Northern Pacific at rates not exceeding those of competing lines as an incident to the sale or lease of any of said lands.

3. Defendants have at all times disposed of the land grant lands thus acquired as rapidly as market conditions and proper examination thereof would permit, and have heretofore sold and conveyed to purchasers more than 37,000,000 acres thereof. More than 90% of the lands thus sold and conveyed have been conveyed without obtaining any agreement from the purchasers with respect to the

routing of traffic. In substantially all cases in which an agreement with respect to the routing of traffic has been obtained from the purchaser, such agreement has been limited to traffic destined to points on or reached via lines of Northern Pacific, and has been made subject to a proviso that Northern Pacific, its successors or assigns, shall not charge a higher rate than that charged by other competing transportation lines between the same points for similar services. Preferential routing provisions, however, have generally been included in leases of such lands for grazing purposes or for the removal of coal, oil, gas, timber, iron ore, or other natural resources, but in substantially all cases such preferential routing agreements have been sub- [fol. 23] ject to provisos which fully preserved the rights of such lessees to use the services of other transportation agencies whenever their rates or services were more favorable than those of Northern Pacific. For example, defendants' grazing leases contain the following standard provision which in some instances has been modified or eliminated at the request of the lessee:

> "All shipments of livestock, wool, mutton or beef made by or for the lessee, destined for points on the line of the Northern Pacific Railway, or its connections, shall be shipped over the Northern Pacific Railway, whenever its freight rates do not exceed the rates over other lines."

Defendants' usual form of oil and gas lease contains the following provisions, which may be modified or amended in individual cases at the request of the applicant:

> "8. The lessee covenants that all products obtained from the premises, as well as from the adjacent lands now or hereafter controlled by it, or manufactures from said products, so far as such products or manufactures are destined for rail shipment, as well as all incoming freight destined for use in the general territory of which the premises are a part, shall be shipped over such railroad line as the lessor may designate, provided the rates and service of such designated line shall equal those of any competing line.

"9. All oil controlled by the lessee, produced from the premises and other lands in the oil field of which the premises are a part shall be delivered to a pipe line reaching the rails of the Northern Pacific Railway Company, whenever there is a pipe line available for such delivery and a price can be obtained for oil so delivered which is at least equal to the price then obtainable for oil produced on said property and delivered to any other pipe line.

"10. Should the lessee decide to construct or cause [fol. 24] others to construct a refinery to refine oil from the field of which the premises are a part, such refinery shall be located at some point on the Northern Pacific rails, provided that at such time it shall be as feasible and economical to construct such refinery on Northern Pacific rails as on those of any other railroad company and all the products of such refinery shall be shipped over the line of the Northern Pacific Railway and its connections provided rates and service shall equal those of any competing line, and the lessor shall have the preference right to purchase at market price all fuel oil offered for sale."

Defendants' leases of coal lands generally contain the following or a similar provision:

"The lessee covenants that all coal removed from the premises as well as from adjacent lands now or hereafter controlled by it, as far as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided its rates and service shall equal those of any competing line."

Defendants' iron ore leases generally contain the following or a similar provision:

"A material consideration moving to the lessor and without which this contract would not be made, is the covenant by the lessee for itself, its successors and assigns, that rates, service and facilities being equal

> to those of any competing line, it will ship all ore mined and shipped from the premises, also all treated products and concentrates mined from the premises, over such railroad line or lines as the lessor may designate from time to time; and that it will not sell or assign its interest in the premises, nor sublet without imposing a like covenant upon such purchaser, assignee or sub-lessee."

Defendants' timber contracts, under which the purchaser of the timber is given the right to cut and remove the same from lands of the defendants, generally contain the follow- [fol. 25] ing or a substantially similar provision:

> "The purchaser agrees, as one of the material considerations of this contract, that, rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports."

4. Defendants have never made a practice of agreeing with or representing to manufacturers who consent to ship their products over the lines of Northern Pacific that defendants will direct or cause grantees of rights in or to the use of lands owned by either of them to supply commodities to such manufacturers for processing or manufacturing. Except in a few instances, defendants have never required

grantees or lessees of their lands to offer to sell or otherwise dispose of, or to sell or otherwise dispose of, commodities raised or produced on such lands or any other lands to vendees designated by defendants or either of them. Defendants have at times sold timber to independent logging companies which were not engaged in the manufacture of any lumber products, and in such instances [fol. 26] have, as an incident of the sale, obtained from the logging company an agreement that it would offer to sell the logs and poles produced by it from such lands, either at prices, terms and conditions suitable to it, or at the prevailing market price, to a designated manufacturer served by Northern Pacific or to such other lumber manufacturing company or companies as would agree in writing that to the extent that such purchaser should be able to control the routing, and provided that Northern Pacific's rates were equal to those of any competing line, he would ship the products thereof via Northern Pacific when destined to points on the railroad of Northern Pacific or its connecting lines.

5. An adequate and continuing supply of logs is essential to the continued ability of manufacturers of lumber to carry on trade and commerce in lumber and lumber products, and the prosperity of many communities served exclusively by Northern Pacific is dependent upon the continued operation of the manufacturers of lumber located therein. It is natural, normal and reasonable for defendants, in the furtherance of their own legitimate interests and the interests of manufacturers and communities which are served by Northern Pacific, to make provision that such manufacturers shall have preference at equal prices in the purchase of timber cut from lands owned by defendants. Such provisions do not eliminate competition for the purchase of such products, and do not restrain but instead promote commerce and trade.

[fol. 27] 6. It is convenient and necessary to the successful operation of a line of railroad, and to the furnishing by it of adequate transportation service to the shipping public, that industries requiring access to railroad trackage for the conduct of their respective businesses be furnished the use of industrial sites on or adjacent to the right of way of such railroad. To this end, all railroads endeavor to acquire lands, suitable for industrial sites, adjoining their respective rights of way in communities which they serve. There is and at all times has been active competition between defendant Northern Pacific and other railroad companies to induce industries to locate on industrial sites on or adjacent to their respective rights of way. Leases of industrial sites may be for a term of years or for an indefinite term as may be agreed between the parties. Defendant Northern Pacific requires a lease for a definite term of years only where it is obligated by the terms of the lease to make substantial improvements on its property for the use of the lessee. All indefinite term leases provide that either party may terminate the same at any time upon thirty days' written notice to the other party. Defendant Northern Pacific and other railroads usually include the following preferential routing provision in all industrial leases except grain elevator and grain warehouse leases:

> "Rates being as favorable, the lessee shall do all transportation business over the railroad of the Railway Company."

[fol. 28] 7. Grain elevators and warehouses are used for the purpose of receiving, storing, shipping, elevating and delivering grain, and are transportation facilities. In order to compete for the transportation of grain produced in the territory which it serves, a railroad company must either provide and operate its own grain elevators or grain loading facilities, or secure, as lessees of grain elevator sites on or adjacent to its right of way, companies engaged in the business of storing and elevating grain, or it must construct trackage to a grain elevator located on other property at the shipping point which it serves. Northern Pacific's standard form of grain elevator lease covering elevators located on its own right of way accordingly provides that "the Railway Company shall have the exclusive right of carrying all grain to be transported from said elevator". Defendants allege on information and belief that all other railroads make like provision under the same circumstances.

8. The practices of defendants hereinabove described were in effect when the railroads of Great Northern Railway Company and Chicago, Milwaukee, St. Paul & Pacific Railroad Company were constructed or extended from St. Paul and Minneapolis to the Pacific Coast, and had been practiced for many years prior thereto and for many years prior to the advent of the trucking industry. Notwithstanding the long existence of said practices, said competing transportation lines and agencies entered the field served by defendant Northern Pacific and have grown and prospered, and have been and are in active compe- [fol. 29] tition with Northern Pacific. Defendants allege that they have neither monopolized nor attempted to monopolize the transportation of products or commodities produced in the territory which they serve, and that the preferential routing agreements which they have obtained have neither restrained nor tended to restrain interstate commerce or trade. Defendants further allege that the products and commodities shipped via Northern Pacific because of such preferential routing clauses constitute and have at all times constituted a relatively small proportion of the products and commodities of like character produced and transported to, from and within the territory served by defendant Northern Pacific.

WHEREFORE, having fully answered plaintiff's complaint, the defendants pray that said complaint be dismissed and that defendants have and recover their costs and disbursements to be taxed as provided by law.

M. L. Countryman, Jr., Dean H. Eastman, Harold G. Boggs, Roscoe Krier, Attorneys for Defendants, Office Address: 909 Smith Tower, Seattle 4, Washington.

Service accepted Nov. 22, 1949

C. L. Whittinghill, of Attorneys for Plaintiff.

[fol. 30] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

REQUEST FOR ADMISSIONS UNDER RULE 36—Filed August 10, 1951

Plaintiff, the United States of America, pursuant to Rule 36 of the Federal Rules of Civil Procedure, for the reasons set forth in the affidavit attached hereto and for the purpose of resolving certain issues of fact without the necessity of lengthy trial procedure, requests defendants Northern Pacific Railway Company and Northwestern Improvement Company within 60 days after service of this request to admit that each of the statements hereinafter set forth is true for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

I

Timber Land Sales

A. The defendants, and their predecessors, during the period 1887 through 1949, made at least 42 sales of timber land including those listed in Appendix I-A hereof, with a total area of more than 49,388 acres and estimated to contain in excess of 1,145,440,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal *it will ship via the Northern Pacific Railway Company all logs, poles and timber cut under this contract.*

[fol. 31] B. The defendants, and their predecessors, during the period 1887 through 1949, made at least 72 sales of timber land including those listed in Appendix I-B hereof, with a total area of more than 2,132,204 acres and estimated to contain in excess of 21,451,123,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal *it will ship via the Northern Pacific Railway Company, all lumber and other products manufactured from the timber cut under this contract.*

C. The defendants, and their predecessors, during the period 1887 through 1949, made at least 7 sales of timber land including those listed in Appendix I-C hereof, with a total area of more than 120,147 acres and estimated to contain in excess of 1,345,425,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal *it will deliver to and ship over the line of the Northern Pacific Railway Co. and its connections, all products manufactured from the timber upon all other lands in the vicinity which the purchaser may at any time control.*

D. The defendants, and their predecessors, during the period 1887 through 1949, made at least 4 sales of timber land including those listed in Appendix I-D hereof, with a total area of more than 41,466 acres and estimated to contain in excess of 688,450,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, *it will offer to sell to* [*desig-*

> *nated vendees*] *all logs from the timber cut under this contract, suitable for its use, at the prevailing market price.*

[fol. 32] E. The defendants, and their predecessors, during the period 1887 through 1949, made at least 44 sales of timber land including those listed in Appendix I-E hereof, with a total area of more than 145,512 acres and estimated to contain in excess of 1,804,177,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal *it will ship by the Northern Pacific Railway Company all* [*timber and/or products manufactured therefrom*] *or an equivalent quantity of timber and other products manufactured from timber cut from lands not covered by this or other contracts now in effect with the Northern Pacific Railway Company or the Northwestern Improvement Company.*

F. The defendants, and their predecessors, during the period 1887 through 1949, made at least 28 sales of timber land including those listed in Appendix I-F hereof, with a total area of more than 1,026,046 acres and estimated to contain in excess of 6,059,462,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal it will [ship timber and/or products manufactured therefrom via Northern Pacific Railway Company]. *Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line.*

G. The defendants, and their predecessors, during the period 1887 through 1949, made at least 8 sales of timber land including those listed in Appendix I-G hereof, with a total area of more than 78,297 acres and estimated to contain in excess of 758,016,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> [fol. 33] The purchaser agrees as one of the material considerations of this contract that, rates being equal it will ship via Northern Pacific Railway [timber and/or products manufactured therefrom]; *that it will offer to sell the logs and poles produced by it from said lands to such lumber manufacturing company or companies as will agree in writing to ship via the Northern Pacific Railway, rates being equal, and to the extent that such purchaser shall be able to control the routing, the lumber and other products manufactured from said logs and poles, destined to points on the railroad of the Railway Company or its connecting lines.*

H. The defendants, and their predecessors, during the period 1887 through 1949, made at least 19 sales of timber land including those listed in Appendix I-H hereof, with a total area of more than 142,883 acres and estimated to contain in excess of 1,739,379,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a light variation thereof, which has been included in the contracts for such sales, deeds, or in separate agreements between the parties to such contracts:

> The purchaser agrees as one of the material considerations of this contract that, rates being equal it will [ship timber and/or products manufactured therefrom via Northern Pacific Railway]. *The purchaser shall make monthly reports to the railway company of shipments under this provision and shall permit the railway company to examine its records at any convenient time or place for the purpose of verifying such reports.*

II

Timber Sales

A. The defendants, and their predecessors, during the period 1887 through 1949, made at least 179 sales of timber, including those listed in Appendix II-A hereof, with a total area of more than 326,159 acres and estimated to contain in excess of 4,886,723,871 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, *he will ship via the Northern Pacific Railway all logs, poles,* lumber and other products manufactured from the timber *cut under this contract,* or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such [fol. 34] shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.

During the year 1949 at least 33 such covenants or agreements relating to a total area of more than 62,219 acres of timber land estimated to contain in excess of 854,455,995 feet, board measure, were in effect and subsisting.

B. The defendants, and their predecessors, during the period 1887 through 1949, made at least 195 sales of timber, including those listed in Appendix II-B hereof, with a total area of more than 384,957 acres and estimated to contain in excess of 10,541,459,371 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, *he will ship via the Northern Pacific Railway all* logs, poles, *lumber and other products manufactured from the timber cut under this contract,* or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.

During the year 1949 at least 39 such covenants or agreements relating to a total area of more than 108,923 acres of timber land estimated to contain in excess of 1,722,362,995 feet, board measure, were in effect and subsisting.

C. The defendants, and their predecessors, during the period 1911 through 1949, made at least 13 sales of timber, [fol. 35] including those listed in Appendix II-C hereof, with a total area of more than 51,028 acres and estimated to contain in excess of 669,669,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The party of the second part agrees that it, its successors and assigns, will offer to the Northern Pacific

> Railway Company for transportation over its lines, and will allow said Railway Company to transport, *all timber,* lumber and lumber products manufactured *from the timber cut* from the lands herein described and *from other lands owned or controlled by it, its successors and assigns, in the same district, provided the Northern Pacific Railway* Company shall transport such timber, lumber and lumber products at as low rates as any competing line.

During the year 1949 at least 1 such covenant or agreement relating to a total area of more than 13,620 acres of timber land estimated to contain in excess of 204,300,000 feet, board measure, was in effect and subsisting.

D. The defendants, and their predecessors, during the period 1911 through 1949, made at least 13 sales of timber, including those listed in Appendix II-D hereof, with a total area of more than 53,448 acres and estimated to contain in excess of 825,971,000 feet, board measure, containing the underlined covenant or ageement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The party of the second part agrees that it, its successors and assigns, will offer to the Northern Pacific Railway Company for transportation over its lines, and will allow said Railway Company to transport, *all timber, lumber and lumber products manufactured from the timber cut* from the lands herein described and *from other lands owned or controlled by it, its successors and assigns, in the same district, provided the Northern Pacific Railway* Company shall transport such timber, lumber and lumber products at as low rates as any competing line.

During the year 1949 at least 2 such covenants or agreements relating to a total area of more than 16,342 acres of timber land estimated to contain in excess of 269,381,000 feet, board measure, were in effect and subsisting.

E. The defendants, and their predecessors, during the period 1887 through 1949, made at least 8 sales of timber, [fol. 36] including those listed in Appendix II-E hereof, with a total area of more than 7,021 acres and estimated to contain in excess of 122,706,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> (4) *The purchaser further agrees, as one of the material considerations of this contract, that it will, prior to offering the same for sale to any other party, offer for sale, or cause to be offered for sale, from time to time as produced, at market prices prevailing at the time of offer,* to the C. B. Lumber & Shingle Company, of Everett, Washington, and to the Seattle Cedar Lumber Company, each on equal proportion, *all cedar logs cut from the timber on said lands and from said other timber.* Either said C. B. Lumber & Shingle Company or said Seattle Cedar Lumber Company *shall have the right, within a reasonable time after receipt of offer, to accept all or any portion of the cedar logs offered to it, as above provided, and, in the event either shall not accept all of the cedar logs so offered to it, the portion not so accepted shall forthwith be offered to the other and such other shall have the right to accept all or any part of such portion, upon the terms above provided, before any part of such portion is offered for sale to any other party.*

During the year 1949 at least 2 such covenants or agreements relating to a total area of more than 3,042 acres of timber land estimated to contain in excess of 69,881,000 feet, board measure, were in effect and subsisting.

F. The defendants, and their predecessors, during the period 1917 through 1949, made at least 89 sales of timber, including those listed in Appendix II-F hereof, with a total area of more than 119,097 acres and estimated to contain in excess of 1,816,895,000 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, *or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract.* Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern [fol. 37] Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.

During the year 1949 at least 34 such covenants or agreements relating to a total area of more than 84,613 acres of timber land estimated to contain in excess of 1,220,072,000 feet, board measure, were in effect and subsisting.

G. The defendants, and their predecessors, during the period 1915 through 1949, made at least 79 sales of timber, including those listed in Appendix II-G hereof, with a total area of more than 144,246 acres and estimated to contain in excess of 2,250,847,661 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from

> timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. *Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line.* The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.

During the year 1949 at least 23 such covenants or agreements relating to a total area of more than 63,175 acres of timber land estimated to contain in excess of 1,181,101,000 feet, board measure, were in effect and subsisting.

H. The defendants, and their predecessors, during the period 1925 through 1949, made at least 7 sales of timber, including those listed in Appendix II-H hereof, with a total area of more than 2,280 acres and estimated to contain in excess of 52,507,000 feet, board measure, containing the [fol. 38] underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this sale, that it will ship or cause to be shipped via the Northern Pacific Railway all products manufactured from all logs cut from the timber which is the subject of this contract, *and that in the sale of such logs it will obtain from its vendee a written undertaking in the form of agreement marked "Exhibit A" hereto attached and made a part hereof. It is specifically understood and agreed, however, that if the Railway Company shall notify the purchaser in writing that any such vendee of the purchaser is in default of compliance with the terms of such undertaking, the purchaser shall forthwith discontinue making any fur-*

> *ther sales to such vendee of logs or other forest products until such time as the Railway Company shall notify the purchaser in writing that sales to such vendee may be resumed.*

During the year 1949 at least 2 such covenants or agreements relating to a total area of more than 560 acres of timber land estimated to contain in excess of 25,287,000 feet, board measure, were in effect and subsisting.

I. The defendants, and their predecessors, during the period 1915 through 1949, made at least 51 sales of timber, including those listed in Appendix II-I hereof, with a total area of more than 24,293 acres and estimated to contain in excess of 395,180,661 feet, board measure, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the contracts for such sales or in separate agreements between the parties to such contracts:

> The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. *The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports.*

[fol. 39] During the year 1949 at least 4 such covenants or agreements relating to a total area of more than 3,200 acres estimated to contain in excess of 97,623,000 feet, board measure, were in effect and subsisting.

III

Mineral Land Leases

A. The defendants and their predecessors, during the period 1887 through 1949, made at least 62 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-A hereof, with a total area of more than 42,386 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> A material consideration moving to the lessor, without which this lease would not be made is the covenant by the lessee for himself, his heirs, successors and assigns, *that all minerals and ores shipped from the [leased] premises shall be shipped over such railroad line as the lessor may designate,* provided that the rates charged by such railroad, its available facilities and the service furnished by it shall be equal in all respects to those which could be furnished by any other competing railroad line, and provided that the cost per ton of haulage and shipment from the premises to the smelter is not greater than that of any other route.

During the year 1949 at least 15 such covenants or agreements relating to a total area of more than 6,250 acres of mineral land were in effect and subsisting.

B. The defendants and their predecessors, during the period 1887 through 1949, made at least 19 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-B hereof, with a total area of more than 5,450 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of [the mineral], *all products manufactured from the [mineral], taken from the premises herein leased,* or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said [mineral] or manufactured products, at as low rates as any competing rail line.

[fol. 40] During the year 1949 at least 5 such covenants or agreements relating to a total area of more than 2,570 acres of mineral land were in effect and subsisting.

C. The defendants and their predecessors, during the period 1887 through 1949, made at least 33 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-C hereof, with a total area of more than 570 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport *all shipments of [the mineral]*, all products manufactured from the [mineral], taken from the premises herein leased, *or other lands which the lessee may now or hereafter own or control,* provided the lessor shall transport said [mineral], or manufactured products, at as low rates as any competing rail line.

During the year 1949 at least 5 such covenants or agreements relating to a total area of more than 570 acres of mineral land were in effect and subsisting.

D. The defendants and their predecessors, during the period 1887 through 1949, made at least 13 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-D hereof, with a total area of more than 2,120 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee agrees that it will offer to the lessor for transportation over its lines and will allow the lessor to transport all shipments of [the mineral], *all products manufactured from the [mineral]*, taken from the premises herein leased, *or other lands which the lessee may now or hereafter own or control*, provided the lessor shall transport said [mineral], or manufactured products, at as low rates as any competing rail line.

During the year 1949 at least 3 such covenants or agreements relating to a total area of more than 290 acres of mineral land were in effect and subsisting.

[fol. 41] E. The defendants and their predecessors, during the period 1887 through 1949, made at least 11 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-E hereof, with a total area of more than 19,526 acres, containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee covenants that all [minerals] produced from the premises, as well as from the adjacent lands now or hereafter controlled by him, so far as such [minerals] are destined for rail shipment, *as well as all incoming freight destined for use in the mining and treatment of said [minerals]*, shall be shipped over such railroad line as the lessor may designate, provided the rates and service of such designated line shall equal those of any competing line.

During the year 1949 at least 1 such covenant or agreement relating to a total area of more than 120 acres of mineral land was in effect and subsisting.

F. The defendants and their predecessors, during the period 1887 through 1949, made at least 6 leases of land containing minerals other than coal or petroleum, including those listed in Appendix III-F hereof, with a total area of more than 3,010 acres containing the underlined covenant or agreement set forth below, or a slight variation thereof, which has been included in the lease contracts, or in separate agreements between the parties to such contracts:

> The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of [mineral], all products manufactured from the [mineral], taken from the premises herein leased, or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said [mineral], or manufactured products, at as low rates as any competing rail line. *Where the point of destination of the product is not on the line of the lessor, such shipments shall be routed to favor the lessor with the longest haul,* if the expense to the lessee is not increased over the cost of shipment over another rail line.

During the year 1949 at least 5 such covenants or agreements relating to a total area of more than 2,690 acres of mineral land were in effect and subsisting.

[fol. 42]

IV

Grazing Land Leases

A. The defendants and their predecessors, during each year 1920 through 1948 leased to others more than a million acres of grazing land. The leases contained the following covenant or agreement, or a slight variation thereof:

> All shipments of live stock, wool, mutton, or beef made by or for the lessee, destined for points on the line of the Northern Pacific Railway, or its connections, shall be shipped over the Northern Pacific Railway, whenever its freight rates do not exceed the rates over other lines.

During the year 1949 at least 1,000 such covenants or agreements, including those listed in Appendix IV hereof, covering more than one million acres of grazing land were in effect and subsisting.

V

Oil and Gas Land Leases

A. The defendants, during the period 1918 through 1949, granted approximately 50 oil and gas permits and leases, including those listed in Appendix V, hereof, covering approximately 150,000 acres of oil and gas lands. The permits and leases contained the following covenant or agreement, or a slight variation thereof:

> The lessee covenants that all products obtained from the premises, as well as from the adjacent lands now or hereafter controlled by it, or manufactured from said products, so far as such products or manufactures are destined for rail shipment, as well as all incoming freight destined for use in the general territory of which the premises are a part, shall be shipped over such railroad line as the lessor may designate, provided the rates and service of such designated line shall equal those of any competing line.
>
> All oil controlled by the lessee, produced from the premises and other lands in the oil field of which the premises are a part shall be delivered to a pipe line reaching the rails of the Northern Pacific Railway Company, whenever there is a pipe line available for such delivery and a price can be obtained for oil so delivered which is at least equal to the price then obtained for oil produced on said property and delivered to any other pipe line.
>
> Should the lessee decide to construct or cause others to construct a refinery to refine oil from the field of which the premises are a part, such refinery shall be located at some point on the Northern Pacific rails, [fol. 43] provided that at such time it shall be as feasible and economical to construct such refinery on Northern Pacific rails as on those of any other railroad company and all the products of such refinery shall be shipped over the line of the Northern Pacific Railway and its connections provided rates and service shall equal those of any competing line, and the lessor shall have the preference right to purchase at market price all fuel oil offered for sale.

During the year 1949, at least 20 such covenants or agreements covering approximately 135,000 acres of oil and gas land were in effect and subsisting.

VI

Coal Land Leases

A. The defendants during the period 1889 through 1949 granted approximately 150 leases, including those listed in Appendix VI hereof, covering more than 75,000 acres of coal land. The leases contained the following covenant or agreement, or a slight variation thereof:

> The lessee covenants that all coal removed from the premises as well as from adjacent lands now or hereafter controlled by it, as far as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided its rates and service shall equal those of any competing line.

During the year 1949 at least 15 such covenants or agreements covering approximately 10,000 acres of coal lands were in effect and subsisting.

VII

Iron Ore Land Leases

A. The defendants during the period 1914 through 1949 granted approximately 31 leases, including those listed in Appendix VII hereof, covering approximately 6,461 acres of iron ore land. The leases contained the following covenant or agreement, or a slight variation thereof:

> A material consideration moving to the lessor and without which this contract would not be made, is the covenant by the lessee for itself, its successors and assigns, that rates, service and facilities being equal to those of any competing line, it will ship all ore mined and shipped from the premises, also all treated products and concentrates mined from the premises, over such railroad line or lines as the lessor may designate

from time to time; and that it will not sell or assign its interest in the premises, nor sublet without imposing a like covenant upon such purchaser, assignee or sublessee.

During the year 1949 at least 16 such covenants or agreements covering approximately 5,261 acres of iron ore land were in effect and subsisting.

[fol. 44] Charles L. Whittinghill, Aute L. Carr, Robert H. Weinstein, Gerald F. McLaughlin, Attorneys for Plaintiff.

Copy received 8-10-'51.

Harold G. Boggs, Attorney for defendants.

APPENDIX I TO REQUEST

Timber Land Sales

A

Number	State	Purchaser	Date	Acres	Board Feet
9,652	Wash.	North Bend Timber Co.	3-12-23	3,133	46,995,000 **
9,713	"	Buckley Logging Co.	4-22-24	1,275	19,125,000 **
9,726	"	Carlson Lumber Co.	9- 8-24	1,640	13,000,000 *
9,766	"	Dalkena Lumber Co.	11-20-25	2,991	16,725,000 *
9,769	"	Howe McGibbon Timber Co.	12-21-25	1,200	18,000,000 **
9,778	"	Panhandle Lumber Co., Ltd.	4- 9-26	4,609	37,230,000 *
9,897	"	Eller Lumber Co.	5-24-29	1,190	17,850,000 **
10,116	"	Theodore F. Wall & Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,139	"	Panhandle Lumber Co.	8-20-35	1,864	27,960,000 **
10,143	"	North Pacific Timber Operations, Inc.	11- 1-35	990	14,850,000 **
10,178	"	Seattle Export Lumber Co.	8-14-38	652	9,780,000 **
10,224	"	Tacoma Eastern Timber Co.	8- 9-37	593	8,895,000 **
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Co.	10- 2-39	2,236	100,000,000 *
10,285	"	St. Paul & Tacoma Lbr. Co.	9-27-40	450	6,750,000 **
10,309	"	St. Paul & Tacoma Lbr. Co.	5-18-40	240	2,380,000 *
10,320	"	Walton Lumber Co.	9-11-40	640	30,480,000 *
10,331	"	St. Paul & Tacoma Lbr. Co.	11-12-40	640	9,600,000 **
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,339	"	St. Paul & Tacoma Lbr. Co.	3-17-41	640	9,600,000 **
10,340 & NW 1-482	"	St. Paul & Tacoma Lbr. Co.	4- 1-41	3,165	47,475,000 **
10,400	"	Bloedel Donovan Lumber Mills	10-30-41	305	4,575,000 **
10,412	"	St. Paul & Tacoma Lbr. Co.	2- 1-42	1,194	17,910,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,447	"	St. Paul & Tacoma Lumber Co.	2- 9-43	642	9,630,000 **
10,466	"	" " " "	8-30-43	1,440	52,581,000 *
10,468	"	" " " "	8-30-43	1,440	52,591,000 *
10,579	"	" " " "		1,281	19,215,000 **
10,588	"	" " " "	8- 9-45	640	9,600,000 **
10,682	"	" " " "	1-20-47	383	3,288,000 *
10,700	"	" " " "	9-23-47	643	9,645,000 **
10,753	"	" " " "	10- 3-48	295	228,000 *
N-213	"	St. Paul & Tacoma Lumber Co.	4-26-28	698	36,658,000 *
N-262	"	" " " "	9-26-29	1,280	81,481,000 *
N-343	"	" " " "	4-27-34	40	1,004,000 *
N-410	"	" " " "	7-10-37	560	18,273,000 *
N-416	"	" " " "	11- 5-37	4,333	154,115,000 *
N-475	"	" " " "	11- 7-40	640	37,061,000 *
N-480	"	" " " "	2-20-41	360	15,493,000 *
N-481	"	" " " "	3-18-41	708	30,601,000 *
N-482	"	" " " "	4- 1-41	1,480	67,261,000 *
N-589	"	" " " "	2- 7-46	640	49,497,000 *
				49,388	1,145,440,000

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* Defendants' Estimate

** Plaintiff's Estimate

B

Number	State	Purchaser	Date	Acres	Board Feet
2,472	Mont.	Big Blackfoot Milling Co.	7- 1-97	41,152	167,241,000 ***
2,732	“	“ “ “ “	6-14-98	10,124	41,143,000 ***
3,881	“	“ “ “ “	8-31-01	150,432	611,355,000 ***
4,023	“	“ “ “ “	3-31-02	184,375	571,164,000 *
4,535	“	“ “ “ “	6-30-03	620,747	2,700,000,000 *
4,734	“	“ “ “ “	6-30-04	1,600	9,440,000 *
4,932	“	“ “ “ “	9- 7-07	11,927	53,017,500 *
5,861	“	“ “ “ “	10-30-09	5,689	17,797,000 *
9,645	Wash.	J. Neils Lumber Co.	12-15-22	4,148	62,220,000 **
9,652	“	North Bend Timber Co.	3-12-23	3,133	46,995,000 **
9,713	“	Buckley Logging Co.	4-22-24	1,275	19,125,000 **
9,726	“	Carlson Lumber Co.	9- 8-24	1,640	13,000,000 *
9,758	“	White River Lumber Co.	8-28-25	8,676	130,140,000 **
9,766	“	Dalkena Lumber Co.	11-20-25	2,991	16,725,000 *
9,769	“	Howe, McGibbon Timber Co.	12-21-25	1,200	18,000,000 **
9,778	“	Panhandle Lumber Co., Ltd.	4- 9-26	4,609	37,230,000 *
9,800	“	J. Neils Lumber Co.	9- 8-26	120	1,800,000 **
9,897	“	Eller Lumber Co.	5-24-29	1,190	17,850,000 **
9,936	“	Pacific National Lumber Co.	2-25-30	625	14,597,000 *
10,067	“	McGoldbrick Lumber Co.	7- 1-33	8,538	48,850,000 *
10,116	“	Theodore F. Wall & Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,139	“	Panhandle Lumber Co.	8-20-35	1,864	27,960,000 **
10,143	“	North Pacific Timber Operations, Inc.	11- 1-35	990	14,850,000 **
10,152	“	Ralph Brindley, Trustee	2- 3-36	64	960,000 **
10,154	“	Albert Miller	2-29-36	298	4,470,000 **
10,168	“	T. A. Peterman dba Peterman Mfg. Co.	7- 1-36	2,216	33,240,000 **
10,178	“	Seattle Export Lumber Co.	8-14-38	652	9,780,000 **
10,224	“	Tacoma Eastern Timber Co.	8- 9-37	593	8,895,000 **
10,260	“	T. A. Peterman dba Peterman Mfg. Co.	2-27-39	1,198	31,140,000 *
10,270	“	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	“	Cascade Timber Co.	10- 2-39	2,236	100,000,000 *
10,285	“	St. Paul & Tacoma Lumber Co.	9-27-40	450	6,750,000 **
10,302	“	Lindberg & Hobi Co.	4-16-40	36,385	545,775,000 **
10,309	“	St. Paul & Tacoma Lumber Co.	5-18-40	240	2,280,000 **
10,319	“	T. A. Peterman dba Peterman Mfg. Co.	8-28-40	480	7,200,000 **
10,320	“	Walton Lumber Co.	9-11-40	640	30,480,000 *
10,331	“	St. Paul & Tacoma Lumber Co.	11-12-40	640	9,600,000 **
10,332	“	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,339	“	St. Paul & Tacoma Lumber Co.	3-17-41	640	9,600,000 **
10,340	“	St. Paul & Tacoma Lumber Co.	4- 1-41	3,165	47,475,000 **
10,346	“	T. A. Peterman	5-29-41	4,904	73,560,000 **
10,400	“	Bloedel Donovan Lumber Mills	10-30-41	305	4,575,000 **
10,412	“	St. Paul & Tacoma Lumber Co.	2- 1-42	1,194	17,910,000 **
10,429	“	E. D. Walton	7-15-42	640	9,600,000 **
10,447	“	St. Paul & Tacoma Lumber Co.	2- 9-43	642	9,630,000 **
10,463	“	Lindberg & Hobi	8-30-43	840	12,600,000 **
10,464	“	T. A. Peterman dba Peterman Mfg. Co.		28,333	21,600,000 **
10,466	“	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 *

[fol. 47]

B

Number	State	Purchaser	Date	Acres	Board Feet
10,486	Wash.	W. H. Lindberg	6- 6-44	2,547	38,105,000 **
10,579	"	St. Paul & Tacoma Lumber Co.		1,281	19,215,000 **
10,588	"	" " " "	8- 9-45	640	9,600,000 **
10,682	"	" " " "	1- 2-47	383	5,745,000 **
10,700	"	" " " "	9-23-47	643	9,645,000 **
10,753	"	" " " "	10- 3-48	295	228,000 *
	****	Frederick Weyerhaeuser	1- 3-00	900,000	14,981,000,000 *
N-150	Wash.	St. Paul & Tacoma Lumber Co.	3-24-24 9-22-31	600	9,000,000 **
N-213	"	" " " "	1- 7-28	698	36,658,000 *
N-262	"	" " " "	12-13-29	1,280	81,481,000 *
N-281	"	Klement & Kennedy	6- 5-30	643	9,045,000 **
N-343	"	St. Paul & Tacoma Lumber Co.	4-27-34	40	1,004,000 *
N-410	"	" " " "	7-10-37	560	18,273,000 *
N-416	"	" " " "	11- 5-37	4,338	154,115,000 *
N-475	"	" " " "	11- 7-40	640	37,061,000 *
N-476	"	West Coast Plywood Co.	11- 1-40 9-15-41	641	9,615,000 **
N-480	"	St. Paul & Tacoma Lumber Co.	2-20-41	360	15,493,000 *
N-481	"	" " " "	3-18-41	708	30,601,000 *
N-482	"	" " " "	4- 1-41	1,480	67,261,000 *
N-488	"	Mutual Lumber Co.	5- 9-41	201	3,015,000 **
N-580	"	St. Paul & Tacoma Lumber Co.	3-28-45	480	21,228,000 *
N-589	"	" " " "	1- 6-48	640	49,497,000 *
2040 or 2047	Idaho	Winton Lumber Co.	1-20-38	21,440	50,000,000 *
2089	"	Pack River Timber Co.	5- 8-45	34,828	75,000,000 **
				2,132,204	21,451,123,500

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* Defendants' Estimate

** Plaintiff's Estimate

*** Estimate of Board Feet based on average of Montana Contracts 4023, 4535, 4734, 4932, 5861 which comes to 4064 BF per acre.

**** Traffic provision in effect for 15 years only.

[fol. 48]

C

Number	State	Purchaser	Date	Acres	Board Feet	Board Feet Adjacent Lands
9,758	Wash.	White River Lumber Co.	8-28-25	8,676	200,000,000 *	200,000,000 *
10,067	"	McGoldrick Lumber Co.	7- 1-33	8,538	48,850,000 *	25,000,000 *
10,302	"	Lindberg & Hobi Co.	4-16-40	36,385	545,775,000 **	
10,463	"	" " " "	8-30-43	840	12,600,000 **	
10,464	"	T. A. Peterman dba Peterman Mfg. Co.		28,333	424,995,000 **	
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,205,000 **	
2,089	Idaho	Pack River Timber Company	5- 8-45	34,828	75,000,000 **	
				120,147	1,345,425,000	225,000,000

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* Defendants' Estimate

** Plaintiff's Estimate

[fol. 49]

D

Number	State	Purchaser	Date	Acres	Board Feet
10,154	Wash.	Albert Miller	2-29-36	298	4,470,000 **
10,281	"	Cascade Timber Company	10- 2-39	2,236	100,000,000 *
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,205,000 **
				41,466	688,450,000

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* Defendants' Estimate
** Plaintiff's Estimate

[fol. 50]

E

Number	State	Purchaser	Date	Acres	Board Feet
9,645	Wash.	J. Neils Lumber Company	12-15-22	4,148	62,222,000 **
9,713	"	Buckley Logging Company	4-22-24	1,275	19,125,000 **
9,778	"	Panhandle Lumber Co., Ltd.	4- 9-26	4,609	37,230,000 *
9,800	"	J. Neils Lumber Company	9- 8-26	120	1,800,000 **
10,116	"	Theodore F. Wall & Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,139	"	Panhandle Lumber Company	8-20-35	1,864	27,960,000 **
10,143	"	North Pacific Timber Operation, Inc.	11- 1-35	990	14,850,000 **
10,249	"	Diamond Match Company	1938	9,168	53,380,000 *
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Company	10- 2-39	2,236	100,000,000 *
10,285	"	St. Paul & Tacoma Lumber Co.	9-27-40	450	6,750,000 **
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,309	"	St. Paul & Tacoma Lumber Co.	5-18-40	240	2,280,000 *
10,320	"	Walton Lumber Company	9-11-40	640	30,480,000 *
10,331	"	St. Paul & Tacoma Lumber Co.	11-12-40	640	9,600,000 **
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,339	"	St. Paul & Tacoma Lumber Co.	3-17-41	640	9,600,000 **
10,340	"	St. Paul & Tacoma Lumber Co.	4- 1-41	3,165	47,475,000 **
10,396	"	Seattle Export Lumber Company	1941	1,738	48,888,000 *
10,400	"	Bloedel Donovan Lumber Mills	10-30-41	305	4,575,000 **
10,412	"	St. Paul & Tacoma Lumber Co.	2- 1-42	1,194	17,910,000 **
10,423	"	Diamond Match Company	5-18-42	640	9,600,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,447	"	St. Paul & Tacoma Lumber Co.	2- 9-43	642	9,630,000 **
10,463	"	Lindberg & Hobi	8-30-43	840	12,600,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 **
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,105,000 **
10,579	"	St. Paul & Tacoma Lumber Co.	5-17-45	1,281	19,215,000 **
10,588	"	" " " "	8- 9-45	640	9,600,000 **
10,682	"	" " " "	1- 2-47	383	5,745,000 **
10,700	"	" " " "	9-23-47	643	9,645,000 **
10,753	"	" " " "	10- 3-48	295	228,000 *
2,040	Idaho	Winton Lumber Company	1-20-38	21,440	321,600,000 **
2,066	"	Diamond Match Company	9-26-40	2,240	33,600,000 **
2,089	"	Pack River Timber Company	5- 8-45	34,828	75,000,000 **
N-213	NWI	St. Paul & Tacoma Lumber Co.	1- 7-28	698	102,812 *
N-343	"	" " " "	4-27-34	40	1,004,000 *
N-410	"	" " " "	7-10-37	560	18,273,000 *

E

Number	State	Purchaser	Date	Acres	Board Feet
N-475	NWI	St. Paul & Tacoma Lumber Co.	11- 7-40	640	9,600,000 **
N-476	"	West Coast Plywood Company	9-15-41 11- 1-40	641	9,615,000 **
N-481	"	St. Paul & Tacoma Lumber Co.	7- 8-41	708	10,620,000 **
N-482	"	" " " "	4- 1-41	1,480	67,261,000 *
N-488	"	Mutual Lumber Company	5- 9-41	201	3,015,000 **
N-589	"	St. Paul & Tacoma Lumber Co.	1- 6-48	640	9,600,000 **
				145,512	1,804,177,000

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* Defendants' Estimate
** Plaintiff's Estimate

[fol. 51]

F

Number	State	Purchaser	Date	Acres	Board Feet
10,067	Wash.	McGoldrick Lumber Company	7- 1-33	8,538	48,850,000 *
10,116	"	Theodore F. Wall and Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,143	"	North Pacific Timber Operations	11- 1-35	990	14,850,000 **
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Company	10- 2-39	2,236	100,000,000 *
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,320	"	Walton Lumber Company	9-11-40	640	30,480,000 *
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,400	"	Bloedel Donoven Lumber Mills	10-30-41	305	4,575,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,463	"	Lindberg & Hobi	8-30-43	840	12,600,000 **
10,464	"	T. A. Peterman, dba Peterman Mfg. Company		28,333	424,995,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 *
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,105,000 **
10,579	"	St. Paul & Tacoma Lumber Co.	5-17-45	1,281	19,215,000 **
10,682	"	St. Paul & Tacoma Lumber Co.	1- 2-47	383	5,745,000 **
2,040	Idaho	Winton Lumber Company	1-20-38	21,440	321,600,000 **
2,089	"	Pack River Timber Company	5- 8-45	34,828	75,000,000 **
N-476	Wash.	West Coast Plywood Co.	11- 1-40 9-15-41	645	9,615,000 **
N-488	"	Mutual Lumber Company	5- 9-41	201	3,015,000 **
2,472	Mont.	Big Blackfoot Milling Co.	7- 1-97	41,152	167,241,000 ***
2,732	"	" " " "	6-14-98	10,124	41,143,000 ***
3,881	"	" " " "	8-31-01	150,432	611,355,000 ***
4,023	"	" " " "	3-31-02	184,375	571,164,000 *
4,535	"	" " " "	6-30-03	620,747	2,700,000,000 *
4,734	"	" " " "	6-30-04	1,600	9,440,000 *
4,932	"	" " " "	9- 7-07	11,927	53,017,000 *
5,861	"	" " " "	10-30-09	5,689	17,797,000 *
				1,169,312	6,059,462,000

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* Defendants' Estimate
** Plaintiff's Estimate
*** Estimate of Board Feet based on average of Montana Contracts 4023, 4535, 4734, 4932, 5861 which comes to 4064 B.F. per acre.

[fol. 52]

G

Number	State	Purchaser	Date	Acres	Board Feet
10,224	Wash.	Tacoma Eastern Timber Company	8- 9-37	593	8,895,000 **
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,463	"	Lindberg & Hobi Company	8-30-43	840	12,600,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 *
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,205,000 **
10,579	"	St. Paul & Tacoma Lumber Co.	5-17-45	1,281	19,215,000 **
10,682	"	St. Paul & Tacoma Lumber Co.	1- 2-47	383	5,745,000 **
2,089	Idaho	Pack River Timber Company	5- 8-45	34,828	75,000,000 **
				78,297	758,016,000

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* Defendants' Estimate
** Plaintiff's Estimate

[fol. 53]

H

Number	State	Purchaser	Date	Acres	Board Feet
10,067	Wash.	McGoldrick Lumber Company	7- 1-33	8,538	48,850,000 *
10,116	"	Theodore F. Wall & Jesse H. Wall dba Wall Bros. Logging Co.	10- 2-34	558	8,370,000 **
10,143	"	North Pacific Timber Operations Inc.	11- 1-35	990	14,850,000 **
10,270	"	F. P. Etheridge	6- 9-39	400	10,468,000 *
10,281	"	Cascade Timber Company	10- 2-39	2,236	100,000,000 *
10,302	"	Lindberg & Hobi Company	4-16-40	36,385	545,775,000 **
10,320	"	Walton Lumber Company	9-11-40	640	30,480,000 *
10,332	"	M. C. Miller Lumber Co., Inc.	11-14-40	640	9,600,000 **
10,400	"	Bloedel Donovan Lumber Mills	10-30-41	305	4,575,000 **
10,429	"	E. D. Walton	7-15-42	640	9,600,000 **
10,463	"	Lindberg & Hobi	8-30-43	840	12,600,000 **
10,464	"	T. A. Peterman dba Peterman Mfg. Co.		28,333	424,995,000 **
10,466	"	St. Paul & Tacoma Lumber Co.	8-30-43	1,440	52,581,000 *
10,486	"	W. H. Lindberg	6- 6-44	2,547	38,205,000 **
10,579	"	St. Paul & Tacoma Lumber Co.	5-17-45	1,281	19,215,000 **
2,040	Idaho	Winton Lumber Company	1-20-38	21,440	321,600,000 **
2,089	"	Pack River Timber Company	5- 8-45	34,828	75,000,000 **
N-476	Wash.	West Coast Plywood Company	9-15-41	641	9,600,000 **
			11- 1-40		
N-488	"	Mutual Lumber Company	5- 9-41	201	3,215,000 **
				142,883	1,739,379,000

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* Defendants' Estimate
** Plaintiff's Estimate

APPENDIX II TO REQUEST

Sales of Timber

A

Number	State	Purchaser	Date	Acres	Board Feet
3	Wash.	E. A. Stroup, et al.	2-19-95	160	9,800,000 *
13	"	St. Paul and Tacoma	1888	53,385	800,775,000 **
17	"	White River Shingle Co.	7- 1-87	320	1,800,000 *
55	Idaho	A. A. Crane and Goode	11-18-96	6,690	100,350,000 **
64	"	" " " "	12- 3-96	800	12,000,000 **
261	"	Sandpoint Lumber Co.	12- 1-98	25,000	375,000,000 **
458	"	Humbird Lumber Co.	10-10-06	10,560	37,140,000 *
530	Wash.	Manley-Moore Lumber Co.	6- 1-09	200	3,000,000 **
553	"	" " " "	1- 13-10	120	1,800,000 **
585	"	August Von Banklin	6-12-11	640	9,600,000 **
609	"	Manley-Moore Lumber Co.	12- 4-11	1,920	28,800,000 **
632	"	Pacific States Lumber Co.	9- 4-12	560	8,400,000 **
638	"	Manley-Moore Lumber Co.	9- 4-12	1,920	28,800,000 **
648	"	Ellensburg Lumber Co.	12-21-12	320	4,800,000 **
679	"	Pacific States Lumber Co.	9-15-13	640	9,600,000 **
690	"	Cascade Timber Co.	12-29-13	1,120	16,800,000 **
693	"	Manley-Moore Logging Co.	12- 1-13	1,920	28,800,000 **
744	"	Miller Brothers	1-29-13	200	3,000,000 **
753	"	Isaac Garrison	3-16-15	640	9,600,000 **
809	"	Pacific States Lumber Co.	7-31-16	840	12,600,000 **
*** 816	"	Somers Bros. Mfg. Co.	9-30-16	4,650	66,316,995 *
822	Idaho	Dalkena Lumber Co.	10-18-16	500	7,500,000 **
823	"	" " "	10-18-16	280	4,200,000 **
855	Wash.	Cascade Lumber Co.	7-10-17	320	4,800,000 **
904	"	Hanaford Creek Logging Co.	5-10-18	1,600	24,000,000 **
931	"	Mutual Lumber Co.	10-30-18	1,300	4,500,000 *
1,026	"	W. G. McAvoy	4-28-21	80	1,346,500 *
1,050	"	Lake Sawyer Lumber Co.	3-27-22	120	1,800,000 **
1,078	"	E. P. Neukirchen	6-16-22	80	1,200,000 **
1,107	"	Allen and Nelson Mill Co.	3-29-23	300	4,500,000 **
1,110	"	Seaboard Timber Co.	4-18-23	600	9,000,000 **
1,119	"	R. Rasmussen	5-25-23	80	1,200,000 **
1,124	"	Lake Sawyer Lumber Co.	6-20-23	560	8,400,000 **
1,144	"	" " " "	11- 5-23	600	9,000,000 **
1,147	"	Manley-Moore Lumber Co.	12-15-23	880	13,200,000 **
1,154	"	North Palix Shingle & Lbr. Co.	2-25-24	160	2,400,000 **
1,157	"	P. Rasmussen	3- 7-24	120	1,800,000 **
1,158	"	J. S. Pederson	3-14-24	240	3,600,000 **
1,179	"	Manley-Moore Lumber Co.	7- 1-24	160	2,400,000 **
1,195	"	Buckley Lumber & Shingle Co.	12- 9-24	640	9,600,000 **
1,196	"	Trap Creek Logging Co.	1- 1-25	320	4,800,000 **
1,200	"	McMillan Lumber Co.	2-25-25	620	11,000,000 *
1,211	"	Lake Sawyer Lumber Co.	3-14-25	40	600,000 **
1,224	"	Johnson Brothers, Co.	4-29-25	80	1,200,000 **
1,226	"	Silver Lake Railway and Lbr. Co.	5- 7-25	80	1,200,000 **
1,250	"	M. C. Miller Lumber Co.	9-12-25	640	9,600,000 **
1,252	"	Cabin Creek Lbr. Co.	9-26-25	1,242	40,485,000 *
1,267	"	High Point Mill Co.	1-23-26	200	3,000,000 **
1,269	"	Manley-Moore Lbr. Co.	1-25-26	300	4,500,000 **
1,279	"	Dalkena Lumber Co.	3-31-26	120	1,800,000 **
1,281	"	Manley-Moore Lbr. Co.	4- 1-26	5,014	229,254,500 *
1,321	"	Pacific States Lbr. Co.	3-10-27	(4,687 (1,920	99,105,000 **

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Number	State	Purchaser	Date	Acres	Board Feet
1,325	Wash.	A. V. Lumber Co.	4-27-27	320	4,800,000 **
1,343	“	William Pierce	6-22-27	160	2,400,000 **
1,344	“	I. G. Naylor	8- 1-27	160	2,400,000 **
[fol. 55]					
1,353	Wash.	Lake Sawyer Lbr. Co.	10- 3-27	651	9,765,000 **
1,371	“	Covington Creek Lbr. Co.	1-23-28	560	8,400,000 **
1,374	“	J. Pinkham Lbr. Co.	2- -28	640	9,600,000 **
1,377	“	Preston Mill Co.	3- 8-28	640	9,600,000 **
1,387	“	High Point Mill Co.	5-31-28	360	5,400,000 **
1,398	“	George Jones	8- 3-28	200	3,000,000 **
1,410	“	Manley-Moore Lbr. Co.	7-31-28	2,680	157,299,465 *
1,444	“	Lake Sawyer Lbr. Co.	4-16-29	80	1,200,000 **
1,445	“	John M. Stoger	4-19-29	200	2,010,250 *
1,452	“	North Bend Timber Co.	5-23-29	40	600,000 **
1,453	“	Wood and Iverson	6- 8-29	920	17,693,000 *
1,457	“	M. C. Miller Lbr. Co.	6- 8-29	560	8,400,000 **
1,461	“	Gauthier Brothers	6-30-29	472	4,713,500 *
1,464	“	North Bend Timber Co.	8-17-29	281	4,215,000 **
1,469	“	Long Lake Lumber Co.	9-25-28	320	4,800,000 **
1,472	“	North Bend Timber Co.	11-25-29	240	3,600,000 **
1,476	“	Jones Lumber Co.	12-24-29	300	4,500,000 **
1,486	“	W. G. Jones	3-25-30	40	712,000 *
1,530	“	Ellensburg Lbr. Co.	9- 2-31	80	1,200,000 **
*** 1,542	“	St. Paul and Tacoma	2- 1-32	390	5,850,000 **
1,557	“	V. Gattavara	8- 8-32	320	4,800,000 **
1,568	“	Carbon River Shingle Co.	11-21-33	120	1,800,000 **
1,584	“	North Bend Timber Co.	6- 2-33	340	5,100,000 **
1,586	“	Buckley Logging Co.	6- 6-33	240	3,600,000 **
1,659	“	V. Gattavara	6-19-33	1,510	22,650,000 **
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
1,676	Wash.	Kelso Veneer Co.	12-20-33	1,120	16,800,000 **
*** 1,710	“	T. A. Peterman	6- 6-34	645	1,300,000 *
1,715	“	Fairfax Lumber Co.	6- 8-34	3,690	55,350,000 **
1,728	“	Cascade Lumber Co.	10-31-34	302	2,987,000 *
1,731	“	St. Paul and Tacoma Lbr. Co.	12-18-34	18,820	282,300,000 **
1,731-1	“	“ “ “ “ “ “	8- 1-36	400	6,000,000 **
1,731-2	“	“ “ “ “ “ “	2-10-37	60	900,000 **
*** 1,731-3	“	“ “ “ “ “ “	3- 8-37	588	34,609,000 *
*** 1,731-4	“	“ “ “ “ “ “	10-23-46	320	4,800,000 **
1,749	“	Buckley Logging Co.	8-20-35	420	6,300,000 **
1,754	“	North Bend Timber Co.	10- 1-35	640	9,600,000 **
1,761	“	Diamond Match Co.	3- 9-36	640	9,600,000 **
1,765	“	Cabin Creek Lumber Co.	5- 6-36	174	2,610,000 **
1,766	“	Lewis Lumber Co.	5-18-36	320	4,800,000 **
1,771	Idaho	L. Cardiff	5-28-36	160	2,400,000 **
1,776	Wash.	West Fork Timber Co.	7-31-36	190	2,850,000 **
1,788	“	North Bend	10- 8-36	1,440	21,600,000 **
1,793	“	Cabin Creek Lumber Co.	11-23-36	170	2,550,000 **
1,807	“	Diamond Match Co.	3-10-37	320	4,800,000 **
1,808	Mont.	Western Lumber Co.	8-22-28	16,846	158,482,000 *
1,813	Wash.	Wheeler-Osgood Corp.	5- 4-37	160	1,200,000 *
1,814	“	McGoldrick Lbr. Co.	5-20-37	640	9,600,000 **
1,815	“	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
1,822	“	M. C. Miller Lumber Co.	7- 1-37	160	2,400.000 **
1,826	“	“ “ “ “ “	7-20-37	150	2,250,000 **
1,828	“	Wilson Brothers Logging Co.	7-21-37	200	3,000,000 **
1,839	“	Brew Mfg. Co.	12- 9-39	110	2,912,000 *

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Number	State	Purchaser	Date	Acres	Board Feet
1,840	Wash.	L. Marenakos	12- 1-37	640	9,600,000 **
1,884	"	Everett Pulp and Paper Co.	5-11-39	400	6,000,000 **
1,885	"	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,886	"	M. C. Miller Lbr. Co.	5-22-39	640	9,600,000 **
1,887	"	Joe Walsh and Cascade Lbr. Co.	5-15-39	320	4,800,000 **
1,890	"	Pacific States Lumber Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lbr. Co.	12- 4-39	40	600,000 **
*** 1,919	"	North Bend Timber Co.	1-11-40	1,820	22,352,000 *
[fol. 56]					
1,924	Wash.	North Bend Timber Co.	3-29-40	60	900,000 **
1,933	"	M. C. Miller Lbr. Co.	6-13-40	480	7,200,000 **
1,937	"	Kosmas Timber Co.	7-20-40	640	10,488,000 *
*** 1,945	"	Taylor Brothers	10- 3-40	480	7,200,000 **
1,946	"	St. Paul and Tacoma	10-28-40	280	4,200,000 **
1,950	"	Seattle Export Lbr. Co.	11-19-40	160	2,400,000 **
1,954	"	Cabin Creek Lbr. Co.	12-19-40	600	9,000,000 **
1,955	"	Everett Pulp and Paper Co.	2- 4-41	200	763,000 *
1,962	"	Mueller Gregory, Inc.	3-17-41	142	2,130,000 **
1,965	"	M. C. Miller Lumber Co.	3-25-41	160	2,400,000 **
1,969	"	Joe Walsh, Cascade Lbr. Co.	3-24-41	320	4,800,000 **
1,970	"	" " " " "	3-24-41	560	8,400,000 **
*** 1,975	"	Crane Creek Lbr. Co.	5- 8-41	80	2,935,000 *
1,997	"	M. C. Miller Lbr. Co.	10- 8-41	35	525,000 **
2,000	"	Crown Zellerbach Corp.	10-23-41	599	10,176,000 *
2,003	"	Joe Walsh, Cascade Tbr. Co.	11-28-41	100	1,500,000 **
2,006	"	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,034	"	Northwest Chair Co.	4-21-42	320	4,800,000 **
2,035	"	Timber Development Co.	4-13-42	640	11,679,000 *
*** 2,037	Idaho	Potlatch Forest, Inc.	12- 1-48	26,075	312,531,000 *
2,059	Wash.	Lincoln Lumber Co.	6-12-42	280	475,000 *
*** 2,067	"	E. K. Bishop Lbr. Co.	8-15-42	120	3,314,000 *
*** 2,072	"	Long Lake Lbr. Co.	8-18-42	2,378	6,382,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *
*** 2,080	"	Lyman Lumber Co. (Soundview Pulp)	1942	2,080	60,759,000 *
*** 2,105	Idaho	Ohio Match Co.	5- 5-43	320	1,634,000 *
2,114	Wash.	D. M. Logman	7-27-43	200	423,000 *
2,122	"	Lindberg and Hobi	8-30-43	300	4,500,000 **
2,146	"	" " "	12-15-43	2,548	38,220,000 **
*** 2,162	"	Bloedel Donovan Lbr. Co.	4-17-44	320	4,800,000 **
2,177	"	M. C. Miller Lumber Co.	9- 5-44	640	11,436,661 *
*** 2,181	"	Ellensburg Lumber Co.	10- 9-44	320	1,378,000 *
*** 2,194	"	Harter Lumber & Fuel Co.	3-19-45	1,582	23,730,000 **
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
*** 2,240	"	St. Paul and Tacoma Lbr. Co.	2-23-46	178	2,670,000 **
2,253	"	M. C. Miller Lbr. Co.	5-27-46	360	5,400,000 **
*** 2,268	"	" " " " "	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
*** 2,298	"	Wall Boone, Incorporated	10-18-46	480	7,200,000 **
*** 2,316	"	Northwest Door Co.	2-17-47	800	12,000,000 **
2,321	"	St. Paul & Tacoma Lbr. Co.	3-27-47	80	1,200,000 **
*** 2,326	"	Keene and Keene	4- 4-47	1,200	18,000,000 **
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,405,000 **
*** 2,328	Wash.	M. C. Miller Lumber Co.	4- 8-47	640	9,600,000 **
*** 2,329	"	" " " " "	4- 8-47	640	9,600,000 **
2,355	"	St. Paul and Tacoma Lbr. Co.	8- 8-47	10	150,000 **
*** 2,363	"	D. L. Underwood	8-22-47	55	825,000 **
*** 2,372	"	Olympic Hardwood Co.	9-25-47	80	1,200,000 **
*** 2,374	"	Wall Boone, Incorporated	10-20-47	33	495,000 **

A

Number	State	Purchaser	Date	Acres	Board Feet
2,388	Wash.	Empire Millwork Co.	10-30-47	639	9,585,000 **
2,392	“	B. John Furniture Corp.	3- 6-47	115	3,916,000 *
*** 2,419	“	Olson Brothers Lumber Co.	5-28-48	37	555,000 **
*** 2,425	“	Northwest Door Co.	6-18-48	160	2,400,000 **
*** 2,434	“	M. C. Miller Lumber Co.	7-28-48	108	1,620,000 **
2,436	“	Clarence Aurys	8- 2-48	20	300,000 **
*** 2,472	“	Cascade Lumber Co.	4-27-49	13,620	204,300,000 **
*** 2,482	“	J. H. Swanberg	6-16-49	260	3,900,000 **
3,190W	Idaho	A. R. Johnson	1-17-45	41,600	624,000,000 **
3,363W	“	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
		East End			
832	Mont.	J. Schiffman	10- 1-45	1,040	15,600,000 **
*** 3,230	“	L. D. McFarland	12-10-45	640	9,600,000 **
*** 3,361	“	Wine Glass Ranch	7-21-48	600	1,000,000 *
NWI Misc. 1821		(T&M 1333) Donald Plummer	5-26-27	640	9,600,000 **

33 active contracts 62,219 Acres 854,455,995 Bd.Ft.
146 inactive contracts 263,940 Acres Total (179 contracts) 326,159 4,886,723,871

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* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 57]

B

Number	State	Purchaser	Date	Acres	Board Feet
13	Wash.	St. Paul and Tacoma Lumber Co.	1888	53,385	800,775,000 **
17	“	White River Shingle Co.	7- 1-87	320	4,800,000 **
55	Idaho	A. A. Crane and Goode Co.	11-18-96	6,690	100,350,000 **
64	“	“ “ “ “ “ “	11-18-96	800	12,000,000 **
261	“	Sandpoint Lumber Co.	12- 1-98	25,000	375,000,000 **
306	Wash.	Kerry Mill Co.	10-10-01	640	9,600,000 **
458	Idaho	Humbird Lumber Co.	10-10-06	10,560	37,140,000 *
530	Wash.	Manley-Moore Lbr. Co.	6- 1-09	200	3,000,000 **
553	“	“ “ “ “	1-13-10	120	1,800,000 **
585	“	August Von Bouhlin	6-12-11	640	9,600,000 **
609	“	Manley-Moore Lbr. Co.	12- 4-11	1,920	28,800,000 **
632	“	Pacific States Lumber Co.	9- 4-12	560	8,400,000 **
638	“	Manley-Moore Lbr. Co.	9- 4-12	1,920	28,800,000 **
648	“	Ellensburg Lbr. Co.	12-21-12	320	4,800,000 **
679	“	Pacific States Timber Co.	9-15-13	640	9,600,000 **
690	“	Cascade Timber Co.	12-29-13	1,120	16,800,000 **
693	“	Manley-Moore Logging Co.	12- 1-13	1,920	28,800,000 **
744	“	Miller Brothers	1-29-13	200	3,000,000 **
809	“	Pacific States Lumber Co.	7-31-16	840	12,600,000 **
*** 816	“	Somers Brothers Mfg. Co.	9-30-16	4,650	66,316,995 **
822	Idaho	Dalkena Lumber Co.	10-18-16	500	7,500,000 **
823	“	“ “ “	10-18-16	280	4,200,000 **
855	Wash.	Cascade Lumber Co.	7-10-17	320	4,800,000 **
904	“	Hanaford Creek Logging Co.	5-10-18	1,600	24,000,000 **
931	“	Mutual Lumber Co.	10-30-18	1,300	4,500,000 *
1,026	“	W. G. McAvoy	4-28-21	80	1,346,500 *
1,027	“	Cabin Creek Lumber Co.	5- 6-21	1,120	18,210,000 *

B

Number	State	Purchaser	Date	Acres	Board Feet
1,050	Wash.	Lake Sawyer Lumber Co.	3-27-22	120	1,800,000 **
1,078	"	E. P. Neukirchen	6-16-22	80	1,200,000 **
*** 1,097	"	J. Neils Lumber Co.	8-21-42	4,082	18,000,000 *
1,107	"	Allen and Nelson Mill Co.	3-29-23	300	4,500,000 **
1,110	"	Seaboard Timber Co.	4-18-23	600	9,000,000 **
1,119	"	R. Rasmussen	5-25-23	80	1,200,000 **
1,124	"	Lake Sawyer Lumber Co.	6-20-23	560	8,400,000 **
1,144	"	" " " "	11- 5-23	600	9,000,000 **
1,147	"	Manley-Moore Lumber Co.	12-15-23	880	13,200,000 **
1,154	"	North Palix Shingle and Lbr. Co.	2-25-24	160	2,400,000 **
1,157	"	P. Rasmussen	3- 7-24	120	1,800,000 **
1,158	"	J. S. Pederson	3-14-24	240	3,600,000 **
1,179	"	Manley-Moore Lumber Co.	7- 1-24	160	2,400,000 **
1,195	"	Buckley Lumber and Shingle Co.	12- 9-24	640	9,600,000 **
1,196	"	Trap Creek Logging Co.	1- 1-25	320	4,800,000 **
1,200	"	McMillan Lumber Co.	2-25-25	620	11,000,000 *
1,211	"	Lake Sawyer Lumber Co.	3-14-25	40	600,000 **
1,224	"	Johnson Brothers Co.	4-29-25	80	1,200,000 **
1,226	"	Silver Lake Railway and Lbr. Co.	5- 7-25	80	1,200,000 **
1,250	"	M. C. Miller Lumber Co.	9-12-25	640	9,600,000 **
1,252	"	Cabin Creek Lumber Co.	9-26-25	1,242	40,485,000 *
1,267	"	High Point Mill Co.	1-23-26	200	3,000,000 **
1,269	"	Manley-Moore Lumber Co.	1-25-26	300	4,500,000 **
1,279	"	Dalkena Lumber Co.	3-31-26	120	1,800,000 **
1,281	"	Manley-Moore Lumber Co.	4- 1-26	5,014	229,254,500 *
1,321	"	Pacific States Lumber Co.	3-10-27	4,687 1,920	99,105,000 **
1,325	"	A. V. Lumber Co.	4-27-27	320	4,800,000 **
1,344	"	I. G. Naylor	8- 1-27	160	2,400,000 **
1,353	"	Lake Sawyer Lumber Co.	10- 3-27	651	9,765,000 **
[fol. 58]					
1,371	Wash.	Covington Creek Lbr. Co.	1-23-28	560	8,400,000 **
1,374	"	J. Pinkham Lbr. Co.	2- -28	640	9,600,000 **
1,377	"	Preston Mill Co.	3- 8-28	640	9,600,000 **
1,382	"	Frank Inglis	4-30-28	640	9,600,000 **
1,387	"	High Point Mill Co.	5-31-28	360	5,400,000 **
1,398	"	George Jones	8- 3-28	200	3,000,000 **
1,410	"	Manley-Moore Lbr. Co.	7-31-28	2,680	157,299,465 **
1,427	Idaho	Atlas Tie Co.	11-30-28	600	9,000,000 **
1,444	Wash.	Lake Sawyer Lbr. Co.	4-16-29	80	1,200,000 **
1,445	"	John M. Stoger	4-19-29	200	2,010,250 *
1,452	"	North Bend Timber Co.	5-23-29	40	712,000 **
1,453	"	Wood and Iverson	6- 8-29	920	17,693,000 *
1,457	"	M. C. Miller Lumber Co.	6- 8-29	560	8,400,000 **
1,461	"	Gauthier Brothers	6-30-29	472	4,713,500 *
1,464	"	North Bend Timber Co.	8-17-29	281	4,215,000 **
1,469	"	Long Lake Lumber Co.	9-25-28	320	4,800,000 **
1,472	"	North Bend Timber Co.	11-25-29	240	3,600,000 **
1,476	"	Jones Lumber Co.	12-24-29	300	4,500,000 **
1,486	"	W. G. Jones	3-25-30	40	712,000 *
1,530	"	Ellensburg Lumber Co.	9- 2-31	80	1,200,000 **
*** 1,542	"	St. Paul and Tacoma Lbr. Co.	2- 1-32	390	5,850,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,568	"	Carbon River Shingle Co.	11-21-33	120	500,000 *
1,584	"	North Bend Timber Co.	6- 2-33	340	5,100,000 **
1,586	"	Buckley Logging Co.	6- 6-33	240	3,600,000 **
1,659	"	V. Gattavara	6-19-33	1,510	22,650,000 **

B

Number	State	Purchaser	Date	Acres	Board Feet
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
1,665	Wash.	Cedar Craft Products Co.	8-29-33	40	600,000 **
1,676	“	Kelso Veneer Co.	12-20-33	1,120	16,800,000 **
*** 1,710	“	T. A. Peterman	6- 6-34	645	1,300,000 *
1,715	“	Fairfax Lumber Co.	6- 8-34	3,690	55,350,000 **
1,728	“	Cascade Lumber Co.	10-31-34	302	2,987,000 *
1,731	“	St. Paul and Tacoma Lbr. Co.	12-18-34	18,820	282,300,000 **
1,731-1	“	“ “ “ “ “ “	8- 1-36	400	6,000,000 **
1,731-2	“	“ “ “ “ “ “	2-10-37	60	900,000 **
*** 1,731-3	“	“ “ “ “ “ “	3- 8-37	588	34,609,000 *
*** 1,731-4	“	“ “ “ “ “ “	10-23-46	320	4,800,000 **
1,749	“	Buckley Logging Co.	8-20-35	420	6,300,000 **
1,754	“	North Bend Timber Co.	10- 1-35	640	9,600,000 **
1,761	“	Diamond Match Co.	3- 9-36	640	9,600,000 **
1,765	“	Cabin Creek Lumber Co.	5- 6-36	174	2,610,000 **
1,766	“	Lewis Lumber Co.	5-18-36	320	4,800,000 **
1,771	Idaho	L. Cardiff	5-28-36	160	2,400,000 **
1,776	Wash.	West Fork Timber Co.	7-31-36	190	2,850,000 **
1,788	“	North Bend Timber Co.	10- 8-36	1,440	21,600,000 **
1,793	“	Cabin Creek Lumber Co.	11-23-36	170	2,550,000 **
1,807	“	Diamond Match Co.	3-10-37	320	4,800,000 **
1,808	“	Western Lumber Co.	8-22-28	16,846	158,482,000 *
1,813	“	Wheeler Osgood Corp.	5- 4-37	160	1,200,000 *
1,814	“	McGoldrick Lumber Co.	5-20-37	640	9,600,000 **
1,815	“	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
*** 1,817	“	U. S. Plywood Corp.	6- 1-37	640	44,113,000 *
1,818	“	“ “ “ “	6- 1-37	1,250	44,113,000 *
1,822	“	M. C. Miller Lumber Co.	7- 1-37	160	2,400,000 **
1,826	“	“ “ “ “ “	7-20-37	150	2,250,000 **
1,828	“	Wilson Brothers Logging Co.	7-21-37	200	3,000,000 **
1,839	“	Brew Manufacturing Co.	12- 9-39	110	2,912,000 *
1,840	“	L. Marenakos	12- 1-37	640	9,600,000 **
1,841	“	Timber Development Co.	12-11-37	398	7,713,000 *
1,884	“	Everett Pulp and Paper Co.	5-11-39	400	6,000,000 **
[fol. 59]					
1,885	Wash.	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,886	“	M. C. Miller Lumber Co.	5-22-39	640	9,600,000 **
1,890	“	Pacific States Lumber Co.	6- 2-39	320	5,409,000 *
1,916	“	M. C. Miller Lumber Co.	12-14-39	40	600,000 **
1,918	“	Wilkenson Timber Co.	12-29-39	320	4,800,000 **
*** 1,919	“	North Bend Timber Co.	1-11-40	1,820	61,771,000 *
1,924	“	“ “ “ “	3-29-40	60	900,000 **
1,933	“	M. C. Miller Lumber Co.	6-13-40	480	7,200,000 **
1,935	“	Joe Walsh	6-27-40	1,280	19,200,000 **
1,937	“	Kosmas Timber Co.	7-20-40	640	10,488,000 *
*** 1,945	“	Taylor Brothers	10- 3-40	480	22,352,000 *
1,946	“	St. Paul and Tacoma Lbr. Co.	10-28-40	280	4,200,000 **
1,950	“	Seattle Export Lumber Co.	11-19-40	160	2,400,000 **
1,954	“	Cabin Creek Lumber Co.	12-19-40	600	9,000,000 **
1,955	“	Everett Pulp and Paper Co.	2- 4-41	200	763,000 *
1,962	“	Mueller, Gregory, Inc.	3-17-41	142	2,130,000 **
1,965	“	M. C. Miller Lbr. Co.	3-25-41	160	2,400,000 **
1,966	“	L. D. McFarland Co.	4- 2-41	4,060	60,900,000 **
*** 1,975	“	Crane Creek Lbr. Co.	5- 8-41	80	2,935,000 *
1,979	“	Soundview Pulp Co.	6- 3-41	2,392	35,880,000 **
1,996	“	Northwest Chair Co.	11-12-41	600	9,000,000 **

B

Number	State	Purchaser	Date	Acres	Board Feet
1,997	Wash.	M. C. Miller Lumber Co.	10- 8-41	35	525,000 **
2,000	“	Crown Zellerbach Corp.	10-23-41	599	10,176,000 *
2,006	“	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,034	“	Northwest Chair Co.	4-21-42	320	4,800,000 **
2,035	“	Timber Development Co.	4-13-42	640	11,679,000 *
*** 2,037	Idaho	Potlatch Forests, Inc.	12- 1-48	26,075	312,531,000 *
2,058	Wash.	Lincoln Lumber Co.	6- 2-42	111	18,210,000 *
2,059	“	“ “ “	6-12-42	280	475,000 *
*** 2,067	“	E. K. Bishop Lumber Co.	8-15-42	120	3,314,000 *
*** 2,072	“	Long Lake Lumber Co.	8-18-42	2,378	6,382,000 *
2,077	“	Alex Cugini	10- 3-42	320	855,000 *
*** 2,080	“	Lyman Lumber Co. (Soundview Pulp)	1942	2,080	60,759,000 *
*** 2,088	“	Soundview Pulp	1-25-43	22,335	351,965,000 *
2,095	“	Tacoma Eastern Lbr. Co.	3-16-43	640	9,600,000 **
*** 2,105	Idaho	Ohio Match Co.	5- 5-43	320	1,634,000 *
2,114	Wash.	D. M. Layman	7-27-43	200	423,000 *
2,122	“	Lindberg and Hobi	8-30-43	300	4,500,000 **
*** 2,139	“	North Bend Timber Co.	1- 1-44	2,722	65,081,000 *
2,141	“	Diamond Match Co.	12-22-43	333	1,687,500 *
2,146	“	Lindberg and Hobi	12-15-43	2,548	38,220,000 **
2,163	“	Raymond Lumber Co.	6- 2-44	80	920,000 *
2,177	“	M. C. Miller Lumber Co.	9- 5-44	640	11,436,661 *
*** 2,181	“	Ellensburg Lumber Co.	10- 9-44	320	1,378,000 *
*** 2,194	“	Harter Lumber and Fuel Co.	3-19-45	1,582	23,730,000 **
2,196	“	Skate Creek Logging Co.	3-19-45	240	783,000 *
*** 2,211	“	Soundview Pulp Co.	8-11-45	8,368	199,654,000 *
2,217	“	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
*** 2,218	“	Soundview Pulp Co.	9-17-45	8,497	136,923,000 *
*** 2,240	“	St. Paul and Tacoma Lbr. Co.	2-23-46	178	2,670,000 **
2,253	“	M. C. Miller Lumber Co.	5-27-46	360	5,400,000 **
*** 2,268	“	“ “ “ “ “	7- 2-46	640	9,600,000 **
2,273	“	Craig L. Spencer	8- 7-46	160	5,345,000 *
*** 2,298	“	Wall Boom, Inc.	10-18-46	480	7,200,000 **
*** 2,316	“	Northwest Door Co.	2-17-47	800	12,000,000 **

[fol. 60]

Number	State	Purchaser	Date	Acres	Board Feet
2,321	Wash.	St. Paul and Tacoma Lbr. Co.	3-27-47	80	1,200,000 **
*** 2,326	“	Keene and Keene	4- 4-47	1,200	18,000,000 **
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,405,000 **
*** 2,328	Wash.	M. C. Miller Lumber Co.	4- 8-47	640	9,600,000 **
*** 2,329	“	“ “ “ “ “	4- 8-47	640	9,600,000 **
2,355	“	St. Paul and Tacoma Lbr. Co.	8- 8-47	10	150,000 **
*** 2,363	“	D. L. Underwood	8-22-47	55	825,000 **
*** 2,372	“	Olympic Hardwood Co.	9-25-47	80	1,200,000 **
*** 2,374	“	Wall Boom, Inc.	10-20-47	33	495,000 **
2,388	“	Empire Millwork Co.	10-30-47	639	9,585,000 **
2,392	“	B. John Furniture Corp.	3- 6-47	115	3,916,000 *
*** 2,419	“	Olson Brothers Lbr. Co.	5-28-48	37	555,000 **
*** 2,425	“	Northwest Door Co.	6-18-48	160	2,400,000 **
*** 2,429	“	St. Paul and Tacoma Lbr. Co.	6- 7-48	160	2,400,000 **
*** 2,434	“	M. C. Miller Lumber Co.	7-28-48	108	1,620,000 **
2,436	“	Clarence Anoys	8- 2-48	20	300,000 **
*** 2,472	“	Cascade Lumber Co.	4-27-49	13,620	204,300,000 **
*** 2,482	“	J. H. Swanberg	6-16-49	260	3,900,000 **
3,190W	Idaho	A. R. Johnson	1-17-45	41,600	624,000,000 **
3,363W	“	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **

B

Number	State	Purchaser	Date	Acres	Board Feet
		East End			
832	Mont.	J. Schiffman	10- 1-45	1,040	
*** 3,230	"	L. D. McFarland	12-10-45	640	9,600,000 **
3,361	"	Wine Glass Ranch	7-21-48	600	1,000,000 *
N.W.I. Miscellaneous					
1821 (T & M 1333)		Donald Plummer	5-26-27	640	9,600,000 **
195 total contracts				384,957	10,541,459,371
39 active contracts				108,923	1,722,362,995
156 inactive contracts				276,024	8,819,096,376

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* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 61]

C

Number	State	Purchaser	Date	Acres	Board Feet
585	Wash.	August Von Bauhlin	6-12-11	640	9,600,000 **
609	"	Manley-Moore Lbr. Co.	12- 4-11	1,920	28,800,000 **
638	"	" " " "	9- 4-12	1,920	28,800,000 **
648	"	Ellensburg Lbr. Co.	12-21-12	320	4,800,000 **
690	"	Cascade Timber Co.	12-29-13	1,120	16,800,000 **
693	"	Manley-Moore Lbr. Co.	12- 1-13	1,920	28,800,000 **
744	"	Miller Bros.	1-29-13	200	3,000,000 **
1,728	"	Cascade Lbr. Co.	10-31-34	302	2,987,000 *
1,808	Mont.	Western Lbr. Co.	8-22-28	16,846	158,482,000 *
2,122	Wash.	Linberg and Hobi	8-30-43	300	4,500,000 **
*** 2,472	"	Cascade Lbr. Co.	4-27-49	13,620	204,300,000 **
3,363W	Idaho	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
No T & M	Wash.	Eatonville Lbr. Co.	10-29-34	3,400	51,000,000 **
13 total contracts				51,028	669,669,000
1 active contract				13,620	204,300,000
12 inactive contracts				37,408	465,369,000

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* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contract

[fol. 62]

D

Number	State	Purchaser	Date	Acres	Board Feet
585	Wash.	August Von Bauhlin	6-12-11	640	9,600,000 **
609	"	Manley Moore Lbr. Co.	12- 4-11	1,920	28,800,000 **
638	"	" " " "	9- 4-12	1,920	28,800,000 **
648	"	Ellensburg Lbr. Co.	12-21-12	320	4,800,000 **
690	"	Cascade Lbr. Co.	12-29-13	1,120	16,800,000 **
693	"	Manley Moore Lbr. Co.	12- 1-13	1,920	28,800,000 **
744	"	Miller Bros.	1-29-13	200	3,000,000 **
1,808	Mont.	Western Lbr. Co.	8-22-28	16,846	252,690,000 **
2,122	Wash.	Linberg & Hobi	8-30-43	300	4,500,000 **
*** 2,139	"	North Bend Tbr. Co.	1- 1-44	2,722	65,081,000 *
*** 2,472	"	Cascade Lbr. Co.	4-27-49	13,620	204,300,000 **

D

Number	State	Purchaser	Date	Acres	Board Feet
3,363W	Idaho	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
No T & M	Wash.	Eatonville Lbr. Co.	10-29-34	3,400	51,000,000 **
13 Total Contracts				53,448	825,971,000
2 Active Contracts				16,342	269,381,000
11 Inactive Contracts				37,106	556,590,000

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 63]

E

Number	State	Purchaser	Date	Acres	Board Feet
21	Wash.	Northwestern Lbr. Co.	4-18-87	640	6,000,000 *
23	"	" " "	9- 1-87	1,280	19,200,000 **
1,200	"	McMillan Lbr. Co.	2-25-25	620	11,000,000 *
1,887	"	Joe Walsh & Cascade Lbr. Co.	5-15-39	320	4,800,000 **
*** 2,139	"	North Bend Tbr. Co.	1- 1-44	2,722	65,081,000 *
*** 2,180	"	V. C. Manahan	10- 9-44	320	4,800,000 **
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
8 Total Contracts				7,321	127,666,000
2 Active Contracts				3,042	69,881,000
6 Inactive Contracts				4,279	57,785,000

* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 64]

F

Number	State	Purchaser.	Date	Acres	Board Feet
855	Wash.	Cascade Lbr. Co.	7-10-17	320	4,800,000 **
904	"	Hanaford Creek Logging Co.	5-10-18	1,600	24,000,000 **
931	"	Mutual Lbr. Co.	10-30-18	1,300	4,500,000 *
*** 1,097	"	J. Neils Lbr. Co.	8-21-42	4,082	18,000,000 *
1,530	"	Ellensburg Lbr. Co.	9- 2-31	80	1,200,000 **
*** 1,542	"	St. Paul and Tacoma	2- 1-32	392	5,880,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
*** 1,710	Wash.	T. A. Peterman	6- 6-34	645	1,300,000 *
1,731-1	"	St. Paul and Tacoma Lbr. Co.	8- 1-36	400	6,000,000 **
*** 1,731-3	"	" " " " " "	3- 8-37	588	34,609,000 *
*** 1,731-4	"	" " " " " "	10-23-46	320	4,800,000 **
1,761	"	Diamond Match Co.	3- 9-36	640	9,600,000 **
1,765	"	Cabin Creek Lbr. Co.	5- 6-36	174	2,610,000 **
1,771	Idaho	L. Cardiff	5-28-36	160	2,400,000 **
1,793	Wash.	Cabin Creek Lbr. Co.	11-23-36	170	2,550,000 **
1,807	"	Diamond Match Co.	3-10-37	320	4,800,000 **
1,815	"	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
*** 1,817	"	U. S. Plywood	6- 1-37	640	44,113,000 *
1,818	"	" " "	6- 1-37	1,250	44,113,000 *
1,822	"	M. C. Miller Lbr. Co.	7- 1-37	160	2,400,000 **
1,826	"	" " " " "	7-20-37	150	2,250,000 **
1,828	"	Wilson Bros. Logging Co.	7-21-37	200	3,000,000 **
1,839	"	Brew Mfg. Co.	12- 9-39	110	2,912,000 *
1,841	"	Timber Development Co.	12-11-37	398	7,713,000 *

F

Number	State	Purchaser	Date	Acres	Board Feet
1,884	Wash.	Everett Pulp and Paper Co.	5-11-39	400	6,000,000 **
1,885	"	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,886	"	M. C. Miller Lbr. Co.	5-22-39	640	9,600,000 **
1,890	"	Pacific States Lbr. Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lbr. Co.	12-14-39	40	600,000 **
1,918	"	Wilkeson Timber Co.	12-29-39	320	4,800,000 **
*** 1,919	"	North Bend Timber Co.	1-11-40	1,820	61,771,000 *
1,924	"	" " " "	3-29-40	60	900,000 **
1,933	"	M. C. Miller Lbr. Co.	6-13-40	480	7,200,000 **
1,937	"	Kosmos Timber Co.	7-20-40	640	10,488,000 *
*** 1,945	"	Taylor Bros.	10- 3-40	480	7,200,000 **
1,946	"	St. Paul and Tacoma Lbr. Co.	10-28-40	280	2,700,000 **
1,950	"	Seattle Export Lbr. Co.	11-19-40	160	2,400,000 **
1,954	"	Cabin Creek Lbr. Co.	12-19-40	600	9,000,000 **
1,955	"	Everett Pulp and Paper Co.	2- 4-41	200	763,000 *
1,962	"	Mueller Gregory, Inc.	3-17-41	140	2,100,000 **
1,965	"	M. C. Miller Lbr. Co.	3-25-41	160	2,400,000 **
1,979	"	Soundview Pulp Co.	6- 3-41	2,392	35,880,000 **
1,996	"	Northwest Chair Co.	11-12-41	600	9,000,000 **
1,997	"	M. C. Miller Lbr. Co.	10- 8-41	35	525,000 **
*** 2,001	"	Seattle Export Lbr. Co.	10-24-41	620	17,603,000 *
2,006	"	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,034	"	Northwest Chair Co.	4-21-42	320	4,800,000 **
*** 2,037	Idaho	Potlatch Forests, Inc.	12- 1-48	26,075	312,531,000 *
2,058	Wash.	Lincoln Lbr. Co.	6- 2-42	110	18,210,000 *
2,059	"	" " "	6-12-42	280	475,000 *
*** 2,067	"	E. K. Bishop Lbr. Co.	8-15-42	120	3,314,000 *
*** 2,072	"	Long Lake Lbr. Co.	8-18-42	2,378	6,382,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *
[fol. 65]					
*** 2,088	Wash.	Soundview Pulp	1-25-43	22,335	351,965,000 *
*** 2,105	Idaho	Ohio Match Co.	5- 5-43	320	1,634,000 *
2,114	Wash.	D. M. Layman	7-27-43	200	423,000 *
2,141	"	Diamond Match Co.	12-22-43	333	1,687,000 *
2,154	"	Crane Creek Logging Co.	4- 3-44	80	2,935,000 *
*** 2,162	"	Bloedel Donovan Lbr. Co.	4-17-44	320	4,800,000 **
*** 2,181	"	Ellensburg Lbr. Co.	10- 9-44	160	1,378,000 *
*** 2,194	"	Harter Lbr. & Fuel Co.	3-19-45	1,582	23,730,000 **
2,196	"	Skate Creek Logging Co.	3-19-45	240	783,000 *
*** 2,211	"	Soundview Pulp	8-11-45	8,368	199,654,000 *
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
*** 2,218	"	Soundview Pulp	9-17-45	8,497	136,923,000 *
*** 2,240	"	St. Paul and Tacoma Lbr. Co.	2-23-46	178	2,670,000 **
2,253	"	M. C. Miller Lbr. Co.	5-27-46	360	5,400,000 **
*** 2,268	"	" " " " "	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
*** 2,298	"	Wall Boom, Inc.	10-18-46	480	7,200,000 **
*** 2,316	"	Northwest Door Co.	2-17-47	800	12,000,000 **
2,321	"	St. Paul and Tacoma	3-27-47	80	1,200,000 **
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,400,000 **
*** 2,328	Wash.	M. C. Miller Lbr. Co.	4- 8-47	640	9,600,000 **
*** 2,329	"	" " " " "	4- 8-47	640	9,600,000 **
2,355	"	St. Paul and Tacoma	8- 8-47	10	150,000 **
*** 2,363	"	D. L. Underwood	8-22-47	55	825,000 **
*** 2,372	"	Olympic Hardwood	9-25-47	80	1,200,000 **
*** 2,374	"	Wall Boom, Inc.	10-20-47	33	495,000 **
2,388	"	Empire Millwork Co.	10-30-47	639	9,585,000 **

F

Number	State	Purchaser	Date	Acres	Board Feet
*** 2,419	Wash.	Olson Brothers Lbr. Co.	5-28-48	37	555,000 **
*** 2,425	"	Northwest Door Co.	6-18-48	160	2,400,000 **
*** 2,429	"	St. Paul and Tacoma	6- 7-48	160	2,400,000 **
*** 2,434	"	M. C. Miller Lbr. Co.	7-28-48	108	1,620,000 **
2,436	"	Clarence Anrys	8- 2-48	20	300,000 **
*** 2,482	"	J. H. Swanberg	6-16-49	260	3,900,000 **
3,363W	Idaho	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
		East End			
*** 3,361	Mont.	Wine Glass Ranch	7-21-48	600	1,000,000 *
89 Total Contracts				119,097	1,816,895,000
34 Active Contracts				84,613	1,220,072,000
55 Inactive Contracts				34,484	596,823,000

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* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 66]

G

Number	State	Purchaser	Date	Acres	Board Feet
753	Wash.	Isaac Garrison	3-16-15	640	9,600,000 **
822	Idaho	Dalkena Lbr. Co.	10-18-16	500	7,500,000 **
1,530	Wash.	Ellensburg Lbr. Co.	9- 2-31	80	1,200,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
1,715	Wash.	Fairfax Lbr. Co.	6- 8-34	3,690	55,350,000 **
1,761	"	Diamond Match Co.	3- 9-36	640	9,600,000 **
1,765	"	Cabin Creek Lbr. Co.	5- 6-36	174	2,610,000 **
1,771	Idaho	L. Cardiff	5-28-36	160	2,400,000 **
1,793	Wash.	Cabin Creek Lbr. Co.	11-23-36	170	2,550,000 **
1,807	"	Diamond Match Co.	3-10-37	320	4,800,000 **
1,815	"	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
1,822	"	M. C. Miller Lbr. Co.	7- 1-37	160	2,400,000 **
1,826	"	" " " " "	7-20-37	150	2,250,000 **
1,828	"	Wilson Bros. Logging Co.	7-21-37	200	3,000,000 **
1,839	"	Brew Mfg. Co.	12- 9-39	110	2,912,000 *
1,841	"	Timber Development Co.	12-11-37	398	7,713,000 *
1,884	"	Everett Pulp and Paper Co.	5-11-39	400	6,000,000 **
1,885	"	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,886	"	M. C. Miller Lbr. Co.	5-22-39	640	9,600,000 **
1,890	"	Pacific States Lbr. Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lbr. Co.	12-14-39	40	600,000 **
1,918	"	Wilkenson Timber Co.	12-29-39	320	4,800,000 **
*** 1,919	"	North Bend Tbr. Co.	1-11-40	1,820	61,771,000 *
1,924	"	" " " "	3-29-40	60	900,000 **
1,933	"	M. C. Miller Lbr. Co.	6-13-40	480	7,200,000 **
1,937	"	Kosmos Timber Co.	7-20-40	640	10,488,000 *
1,950	"	Seattle Export Lbr. Co.	11-19-40	160	2,400,000 **
1,954	"	Cabin Creek Lbr. Co.	12-19-40	600	9,000,000 **
1,955	"	Everett Pulp and Paper Co.	2- 4-41	200	763,000 *
1,962	"	Mueller, Gregory, Inc.	3-17-41	140	2,100,000 **
1,965	"	M. C. Miller Lbr. Co.	3-25-41	160	2,400,000 **
1,979	"	Soundview Pulp Co.	6- 3-41	2,392	35,880,000 **
1,996	"	Northwest Chair Co.	11-12-41	600	9,000,000 **
1,997	"	M. C. Miller Lbr. Co.	10- 8-41	35	525,000 **

G

Number	State	Purchaser	Date	Acres	Board Feet
2,006	Wash.	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,034	"	Northwest Chair Co.	4-21-42	320	4,800,000 **
2,058	"	Lincoln Lbr. Co.	6- 2-42	110	18,210,000 *
2,059	"	" " "	6-12-42	280	475,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *
*** 2,088	"	Soundview Pulp Co.	1-25-43	22,335	351,965,000 *
*** 2,105	Idaho	Ohio Match Co.	5- 5-43	320	1,634,000 *
2,114	Wash.	D. M. Layman	7-27-43	200	423,000 *
2,122	"	Lindberg & Hobi	8-30-43	300	4.500,000 **
*** 2,139	"	North Bend Timber Co.	1- 1-44	2,722	65,081,000 *
2,141	"	Diamond Match Co.	12-22-43	333	1,687,000 *
2,154	"	Crane Creek Logging Co.	4- 3-44	80	2,935,000 *
2,177	"	M. C. Miller Lbr. Co.	9- 5-44	640	11,436,661 *
*** 2,181	"	Ellensburg Lbr. Co.	10- 9-44	160	1,378,000 *
2,194	"	Harter Lumber & Fuel Co.	3-19-45	1,582	23,730,000 **
2,196	"	Skate Creek Logging Co.	3-19-45	240	783,000 *
*** 2,211	"	Soundview Pulp Co.	8-11-45	8,368	199,654,000 *
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
*** 2,218	"	Soundview Pulp Co.	9-17-45	8,497	136,923,000 *
[fol. 67]					
2,253	Wash.	M. C. Miller Lbr. Co.	5-27-46	360	5,400,000 **
*** 2,268	"	" " " " "	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
*** 2,298	"	Wall Boom, Inc.	10-18-46	480	7,200,000 **
*** 2,316	"	Northwest Door Co.	2-17-47	800	12,000,000 **
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,400,000 **
*** 2,328	Wash.	M. C. Miller Lbr. Co.	4- 8-47	640	9,600,000 **
*** 2,329	"	" " " " "	4- 8-47	640	9,600,000 **
2,355	"	St. Paul and Tacoma	8- 8-47	10	150,000 **
*** 2,363	"	D. L. Underwood	8-22-47	55	825,000 **
*** 2,372	"	Olympic Hardwood	9-25-47	80	1,200,000 **
*** 2,374	"	Wall Boom, Inc.	10-20-47	33	495,000 **
2,388	"	Empire Millwork Co.	10-30-47	639	9,585,000 **
*** 2,419	"	Olson Bros. Lbr. Co.	5-28-48	37	555,000 **
*** 2,425	"	Northwest Door Co.	6-18-48	160	2,400,000 **
*** 2,429	"	St. Paul & Tacoma	6- 7-48	160	2,400,000 **
*** 2,434	"	M. C. Miller Lbr. Co.	7-28-48	108	1,620,000 **
2,436	"	Clarence Aury's	8- 2-48	20	300,000 **
*** 2,472	"	Cascade Lumber Co.	4-27-49	13,620	204,300,000 **
*** 2,482	"	J. H. Swanberg	6-16-49	260	3,900,000 **
3,190W	Idaho	A. R. Johnson	1-17-45	41,600	624,000,000 **
3,363W	"	Idaho Pole Co.	9- 1-48	8,520	127,800,000 **
No T & M	Wash.	Eatonville Lbr. Co.	10-29-34	3,400	51,000,000 **
		East End			
*** 3,230	Mont.	L. D. McFarland	12-10-45	640	9,600,000 **
*** 3,361	"	Wine Glass Ranch	7-21-48	600	1,000,000 *
79 Total Contracts				144,246	2,250,847,661
23 Active Contracts				63,175	1,181,101,000
56 Inactive Contracts				81,071	1,069,746,661

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* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 68]

H

Number	State	Purchaser	Date	Acres	Board Feet
1,200	Wash.	McMillan	2-25-25	620	11,000,000 *
*** 1,945	"	Taylor Bros.	10- 3-40	480	22,352,000 *
*** 1,975	"	Crane Creek Lbr. Co.	5- 8-41	80	2,935,000 *
2,095	"	Tacoma & Eastern	3-16-43	640	9,600,000 **
2,122	"	Lindberg & Hobi	8-30-43	300	4,500,000 **
2,154	"	Crane Creek Logging Co.	4- 3-44	80	1,200,000 **
2,163	"	Raymond Lumber Co.	6- 2-44	80	920,000 *
7 Total Contracts				2,280	52,507,000
2 Active Contracts				560	25,287,000
5 Inactive Contracts				1,720	27,220,000

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* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 69]

I

Number	State	Purchaser	Date	Acres	Board Feet
753	Wash.	Isaac Garrison	3-16-15	640	9,600,000 **
1,343	"	William Pierce	6-22-27	160	2,400,000 **
1,387	"	High Point Mill Co.	5-31-28	360	5,400,000 **
1,530	"	Ellensburg Lumber Co.	9- 2-31	80	1,200,000 **
1,557	"	V. Gattavara	8- 8-32	320	4,800,000 **
1,568	"	Carbon River Shingle Co.	11-21-33	120	500,000 *
1,586	"	Buckley Logging Co.	6- 6-33	240	3,600,000 **
1,660	Idaho	L. Cardiff	7- 1-33	4,059	60,885,000 **
1,749	Wash.	Buckley Logging Co.	8-20-35	420	6,300,000 **
1,765	"	Cabin Creek Lumber Co.	5- 6-36	174	2,610,000 **
1,766	"	Lewis Lumber Co.	5-18-36	320	4,800,000 **
1,788	"	North Bend Timber Co.	10- 8-36	1,440	21,600,000 **
1,793	"	Cabin Creek Lumber Co.	11-23-36	170	2,550,000 **
1,813	"	Wheeler Osgood Corp.	5- 4-37	160	1,200,000 *
1,815	"	St. Regis Kraft Co.	5-26-37	620	3,272,000 *
1,822	"	M. C. Miller Lumber Co.	7- 1-37	160	2,400,000 **
1,826	"	" " " " "	7-20-37	150	2,250,000 **
1,828	"	Wilson Brothers Logging Co.	7-21-37	200	3,000,000 **
1,839	"	Brew Manufacturing Co.	12- 9-39	110	2,912,000 *
1,841	"	Timber Development Co.	12-11-37	398	7,713,000 *
1,884	"	Everett Pulp and Paper Co.	5-11-[illegible]	400	6,000,000 **
1,885	"	Ben Cheney Timber Co.	5- 9-39	640	9,600,000 **
1,890	"	Pacific States Lumber Co.	6- 2-39	320	5,409,000 *
1,916	"	M. C. Miller Lumber Co.	12-14-39	40	600,000 **
1,918	"	Wilkenson Timber Co.	12-29-39	320	4,800,000 **
*** 1,919	"	North Bend Timber Co.	1-11-40	1,820	61,771,000 *
1,924	"	North Bend Timber Co.	3-29-40	60	900,000 **
1,937	"	Kosmos Timber Co.	7-20-40	640	10,488,000 *
*** 1,945	"	Taylor Brothers	10- 3-40	480	22,352,000 *
1,954	"	Cabin Creek Lumber Co.	12-19-40	600	9,000,000 **
1,962	"	Mueller, Gregory, Inc.	3-17-41	140	2,100,000 **
1,965	"	M. C. Miller Lumber Co.	3-25-41	160	2,400,000 **
1,996	"	Northwest Chair Co.	11-12-41	600	9,000,000 **
2,000	"	Crown Zellerbach Corp.	10-23-41	599	10,176,000 *
2,006	"	West Coast Plywood Co.	12- 1-41	460	6,900,000 **
2,058	"	Lincoln Lumber Co.	6- 2-42	111	18,210,000 *
2,059	"	" " "	6-12-42	280	475,000 *
2,077	"	Alex Cugini	10- 3-42	320	855,000 *

Number	State	Purchaser	Date	Acres	Board Feet
2,114	Wash.	D. M. Layman	7-27-43	200	423,000 *
2,154	"	Crane Creek Logging Co.	4- 3-44	80	2,935,000 *
2,177	"	M. C. Miller Lumber Co.	9- 5-44	640	11,436,661 *
2,194	"	Harter Lumber and Fuel Co.	3-19-45	1,582	23,730,000 **
2,196	"	Skate Creek Logging Co.	3-19-45	240	783,000 *
2,217	"	Eclipse Mill Co.	9-14-45	1,119	11,825,000 *
2,240	"	St. Paul and Tacoma	2-23-46	178	2,670,000 **
*** 2,268	"	M. C. Miller Lumber Co.	7- 2-46	640	9,600,000 **
2,273	"	Craig L. Spencer	8- 7-46	160	5,345,000 *
2,327	Idaho	Diamond Match Co.	4- 8-47	160	2,400,000 **
2,388	Wash.	Empire Millwork Co.	10-30-47	639	9,585,000 **
2,434	"	M. C. Miller Lumber Co.	7-28-48	108	1,620,000 **
*** 2,482	"	J. H. Swanberg	6-16-49	260	3,900,000 **
51 Total Contracts				24,293	395,180,661
4 Active Contracts				3,200	97,623,000
46 Inactive Contracts				21,093	297,557,661

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* Defendants' Estimate
** Plaintiff's Estimate
*** Active Contracts

[fol. 70]

APPENDIX III TO REQUEST

Leases of Mineral Lands

A

T&M Number	Purchaser	Date	Acreage
12	Jeremiah O'Conner	11- 3-94	160
20	H. Middough	4- 1-96	160
46	J. T. Mitchell	5- 4-84	100
201	Joseph McCabe	9-28-97	120
443	Bell and Price	1-28-05	40
486 (723)	Bell and Scott	10-10-07	40
526 (451)	Montague J. Bond	6-11-09	320
*** 532	Three Forks Portland Cement Co.	12-22-08	1,000
734	P. F. McGavern & Martin J. Burns	8- 1-14	160
755	Edward Harsky, et al.	5-29-14	640
778	Lucien F. McConike, Sr.	4-15-15	640
795	O. W. Sinclair	3-27-16	80
830	Frank C. Bailey	8-12-16	40
958	M. E. Jesseph	6- 2-19	350
*** 1,029 (1,480 NWI)	Wilkeson Sandstone Quarry Co.	3- 1-21	160
1,118	Edward A. Morley	4-30-41	640
1,133	The Arquetite Products Co.	8- 1-23	80
1,211	Thomas Myles	12-15-25	640
1,247	Paul Leuschel	8- 1-25	120
1,304	The Kittitas Diatomite Co.	11- 1-26	80
1,307	Alex Allardyse	6-17-27	5,760
1,350	The Manufacturers Mineral Co.	9-15-27	250
1,369	H. A. Helland & C. A. Dawson	9- 1-26	200
1,434	Phosphate Products Co.	8-27-24	560
1,567	R. B. Kenyon	1-27-33	640

A

T&M Number	Purchaser	Date	Acreage
1,706	G. Henry Bennet	6- 1-27	160
1,732	Mrs. Shingaburow Sato & S. Ogato	12-24-34	80
1,859	Coer D'Alene Extension Mines, Inc.	6-30-38	410
2,100	John A. Roos	5-11-43	4,800
2,109	H. B. Reser	3-17-41	160
*** 2,271	Homer H. Shepard & Robt. Lambert	6-18-46	120
2,278	Manufacturers Mineral Co.	10- 1-46	320
2,399	Silver Buckle Mining Co.	1-30-48	980
*** 2,412	Manufacturers Mineral Co.	3-11-48	50
*** 2,421	R. Giselius	4-30-34	160
*** 2,431	Ernest J. Petersen	7-12-49	1,280
*** 2,473	Mt. St. Helens Pumice Corp.	4-28-49	400
*** 2,516	The Corliss-Kaiser Co.	11- 3-49	80
2,704	Carl H. Peterson	2-20-37	9,996
2,802	Anaconda Copper Mining Co.	4- 1-39	640
2,840	S. Standish	7- 1-39	1,280
2,860	Joseph T. Farrow	10- 2-39	40
2,939A	Lewis Clark	11- 6-41	640
2,984A	Henry A. Schute	12- 7-42	400
2,986	O. F. Martin	8-23-41	160
3,023	Elmer Maddux	3- 9-42	160
3,030	Bryan F. Croghan	4- 9-42	160
3,033	Rupert Varech	4-16-42	640
3,038	Ernest Vetter	5- 4-42	640
3,045	L. F. Teutsch	7- 1-42	700
3,129	Mrs. E. Rice Myers	11-30-43	160
*** 3,129A	O. F. Martin	11- 1-48	160
*** 3,180	Martin Mining Co.	10-23-44	160
3,184	Thomas Myles, Jr.	11-25-44	160
[fol. 71]			
3,216A	Mike Di Lulo	12-15-45	400
*** 3,241	Manganese Products Co.	3-10-46	240
3,283	W. A. Noon	9- 5-46	1,070
*** 3,296	Arthur S. Fee	1- 3-47	160
3,302	J. A. Denney	4- 5-47	160
*** 3,328	Silica Products Co., Inc.	3- 1-48	1,920
*** 3,384	H. L. Poston	8- 1-49	200
*** 3,399	Dan J. Grant & A. R. Johnson	10- 6-49	160

62 Total Contracts	42,386
15 Active Contracts	6,250
47 Inactive Contracts	36,130

*** Active Contracts

[fol. 72]

B

T&M Number	Purchaser	Date	Acres
20	H. Middough	4- 1-96	160
46	J. T. Mitchell	5-24-84	100
486 (723)	Bell and Scott	10-10-07	40
526 (451)	Montague J. Bond	6-11-09	320
*** 532	Three Forks Portland Cement Co.	12-22-08	1,000
778	Lucien F. McConike, Sr.	4-15-15	640
795	O. W. Sinclair	3-27-16	80
*** 1,029 (1,480 NWI)	Wilkeson Sandstone Quarry Co.	3- 1-21	160
1,133	The Arquetite Products Co.	8- 1-23	80

B

T&M Number	Purchaser	Date	Acres
1,304	The Kittitas Diatomite Co.	11- 1-26	80
1,350	The Manufacturers Mineral Co.	9-15-27	250
1,567	R. B. Kenyon	1-27-33	640
1,732	Mrs. Shingaburaw & S. Agato	12-24-34	80
1,859	Coer D'Alene Extension Mines, Inc.	6-30-38	410
2,378	Columbia Basin Brick & Tile Co.	10- 7-47	80
*** 2,412	Manufacturers Mineral Co.	3-11-48	50
*** 2,431	Ernest J. Petersen	7-12-49	1,280
*** 2,516	The Corliss-Kaiser Co.	11- 3-49	80
3,129	Mrs. E. Rice Myers	11-30-43	160

19 Total Contracts	5,450
5 Active Contracts	2,570
14 Inactive Contracts	2,880

*** Active Contracts

C

T&M Number	Purchaser	Date	Acres
20	H. Middough	4- 1-96	160
46	J. T. Mitchell	5-24-84	100
443	Belland Price	1-28-05	40
486 (723)	Bell and Scott	10-10-07	40
526 (451)	Montague J. Bond	6-11-09	320
734	P. F. McGavern & Martin J. Burns	8- 1-14	160
778	Lucien F. McConike, Sr.	4-15-15	640
795	O. W. Sinclair	3-27-16	80
830	Frank C. Bailey	8-12-16	40
958	M. E. Jesseph	6- 2-19	350
*** 1,029 (1,480 NWI)	Wilkeson Sandstone Quarry Co.	3- 1-21	160
1,118	Edward A. Morley	4-30-41	640
1,133	The Arquetite Products Co.	8- 1-23	80
1,247	Paul Leuschel	8- 1-25	120
1,350	The Manufacturers Mineral Co.	9-15-27	250
1,369	H. A. Helland & C. A. Dawson	9- 1-26	200
1,434	Phosphate Products Co.	8-27-24	560
1,706	G. Henry Bennet	6- 1-27	160
1,732	Mrs. Shingaburow Sato & S. Agata	12-24-34	80
2,100	John A. Roos	5-11-43	4,800
*** 2,271	Homer H. Shepard & Robt. B. Lambert	6-18-46	120
*** 2,412	Manufacturers Mineral Co.	3-11-48	50
*** 2,421	R. Giselius	4-30-34	160
*** 2,516	The Corliss Kaiser Co.	11- 3-49	80
2,704	Carl H. Peterson	2-20-37	9,996
2,840	S. Stanish	7- 1-39	1,280
2,860	Joseph T. Farrow	10- 2-39	40
2,939A	Lewis Clark	11- 6-41	640
2,984A	Henry A. Schute	12- 7-42	400
3,038	Ernest Vetter	5- 4-42	640
3,045	L. F. Teutsch	7- 1-42	700
3,216A	Mike DiLulo	12-15-45	400
3,283	W. A. Noon	9- 5-46	1,070

33 Total Contracts	24,556
5 Active Contracts	570
28 Inactive Contracts	23,986

*** Active Contracts

[fol. 74]

D

T&M Number	Purchaser	Date	Acres
20	H. Middough	4- 1-96	160
46	J. T. Mitchell	5-24-84	100
486 (723)	Bell and Scott	10-10-07	40
526 (451)	Montague J. Bond	6-11-09	320
778	Lucien F. McConike	4-15-15	640
795	O. W. Sinclair	3-27-16	80
*** 1,029 (1,480 NWI)	Wilkeson Sandstone Quarry Co.	3- 1-21	160
1,133	The Arquetite Products Co.	8- 1-23	80
1,350	The Manufacturers Mineral Co.	9-15-27	250
1,732	Mrs. Shingaburow Sato & S. Ogata	12-24-34	80
2,378	Columbia Basin Brick & Tile Co.	10- 7-47	80
*** 2,412	Manufacturers Mineral Co.	3-11-48	50
*** 2,516	The Corliss-Kaiser Co.	11- 3-49	80
13 Total Contracts			2,120
3 Active Contracts			290
10 Inactive Contracts			1,830

*** Active Contracts

[fol. 75]

E

T&M Number	Purchaser	Date	Acres
2,100	John A. Roos	5-11-43	4,800
*** 2,271	Homer H. Shepard & Robt. B. Lambert	6-18-46	120
2,378	Columbia Basin Brick & Tile Co.	10- 7-47	80
2,704	Carl H. Peterson	2-20-37	9,996
2,840	S. Standish	7- 1-39	1,280
2,860	Joseph T. Farrow	10- 2-39	40
2,939A	Lewis Clark	11- 6-41	640
2,984A	Henry A. Schute	12- 7-42	400
3,045	L. F. Teutsch	7- 1-42	700
3,216A	Mike DiLulo	12-15-45	400
3,283	W. A. Noon	9- 5-46	1,070
11 Total Contracts			19,526
1 Active Contract			120
10 Inactive Contracts			19,406

*** Active Contracts

[fol. 76]

F

T&M Number	Purchaser	Date	Acres
2,278	Manufacturers Mineral Co.	10- 1-46	320
*** 2,412	" " "	3-11-48	50
*** 2,473	Mt. St. Helens Pumice Corp.	4-28-49	400
*** 2,516	The Corliss-Kaiser Co.	11- 3-49	80
*** 3,241	Manganese Products Co.	3-10-46	240
*** 3,328	Silica Products Co., Inc.	3- 1-48	1,920
6 Contracts, Total			3,010
5 Active Contracts			2,690
1 Inactive Contract			320

*** Active Contracts

[fol. 77]

APPENDIX IV TO REQUEST

Northwestern Improvement Company Contracts

Contract Nos.

70-N
194-N
413-N
656-N
787-N
793-N
833-N
897-N
918-N
1,038-N
1,112-N
1,122-N
1,156-N
1,166-N
1,284-N
1,344-N
1,467-N
1,545-N
1,598-N
1,679-N
1,709-N
1,719-N
1,839-N
1,845-N
1,897-N
1,926-N
1,930-N
1,959-N
1,975-N
1,989-N
1,995-N
1,997-N
1,998-N
2,023-N
2,056-N
2,064-N
2,082-N
2,095-N
2,108-N
2,117-N
2,238-N
2,247-N
2,248-N
2,249-N
2,251-N
2,264-N
2,289-N
2,307-N
2,352-N
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2,381-N
2,502-N
2,504-N
2,508-N
2,552-N
2,574-N
2,597-N
2,628-N
2,651-N
2,663-N
2,666-N
2,678-N
2,681-N
2,685-N
2,692-N
2,724-N
2,731-N
2,734-N
2,750-N
2,757-N
2,775-N
2,780-N
2,778-N
2,807-N
2,813-N
2,816-N
2,821-N
2,822-N
2,823-N
2,832-N
2,838-N
2,846-N
2,854-N
2,860-N
2,872-N
2,873-N
2,874-N
2,886-N
2,891-N
2,892-N
2,902-N
2,920-N
2,928-N
2,930-N
2,932-N
2,943-N
2,945-N
2,947-N
2,951-N
2,955-N
2,957-N
2,962-N
2,965-N
2,967-N
2,971-N
2,972-N
2,980-N
2,984-N
2,986-N
2,988-N
2,991-N
2,995-N
3,000-N
3,002-N
3,003-N
3,004-N
3,008-N
3,017-N
3,018-N
3,020-N
3,022-N
3,029-N
3,030-N
3,037-N
3,041-N
3,042-N
3,046-N
3,054-N
3,055-N
3,056-N
3,066-N
3,070-N
3,073-N
3,081-N
3,082-N
3,092-N
3,094-N
3,098-N
3,100-N
3,101-N
3,102-N
3,104-N
3,105-N
3,106-N
3,108-N
3,113-N
3,114-N
3,115-N
3,117-N
3,118-N
3,119-N
3,120-N
3,132-N
3,133-N
3,135-N
3,136-N
3,137-N
3,138-N
3,146-N
3,149-N
3,153-N
3,162-N
3,165-N
3,167-N
3,170-N
3,173-N
3,185-N
3,188-N
3,189-N
3,191-N
3,192-N
3,195-N
3,199-N
3,200-N
3,201-N
3,202-N
3,206-N
3,209-N
3,214-N
3,217-N
3,220-N
3,223-N
3,225-N
3,230-N
3,232-N
3,233-N
3,236-N
3,237-N
3,238-N
3,239-N
3,241-N
3,242-N
3,287-N
3,288-N
3,289-N
3,290-N
3,293-N
3,294-N
3,296-N
3,297-N
3,298-N
3,299-N
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3,305-N
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3,308-N
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3,247-N
3,252-N
3,253-N
3,254-N
3,255-N
3,260-N
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3,265-N
3,275-N
3,281-N
3,283-N
3,284-N
3,309-N
3,311-N
3,312-N
3,318-N
3,320-N
3,321-N
3,322-N
3,324-N
3,325-N
3,326-N
3,329-N
3,331-N
3,332-N
3,333-N
3,336-N
3,339-N
3,340-N
3,345-N
3,347-N
3,348-N
3,350-N
3,352-N
3,353-N
3,355-N
3,356-N

3,357-N
3,358-N
3,359-N

[fol. 78] Northern Pacific Railway Company—Wyoming Contracts

Contract Nos.

6,551
7,648
7,913
8,832
9,023
9,625
9,736
9,737
11,308
11,324
11,345

[fol. 79] Northern Pacific Railway Company—Montana Contracts

Contract Nos.

1,133
1,137
1,543
1,629
2,029
2,059
2,106
2,644
2,881
3,000
3,060
3,127
3,194
3,207
3,241
3,394
3,536
3,598
3,630
3,679
3,733
3,814
3,990
4,001
4,022
4,063
4,080
4,099
4,107
4,122
4,123
4,171
4,196
4,215
4,231
4,251
4,271
4,326
4,357
4,428
4,437
4,450
4,533
4,637
4,643
4,647
4,738
4,763
4,781
4,789
4,815
4,827
4,861
4,865
4,888
4,950
4,955
4,956
4,964
4,969
5,000
5,051
5,056
5,078
5,102
5,125
5,137
5,190
5,202
5,241
5,295
5,315
5,333
5,574
5,588
5,616
5,638
5,738
5,792
5,809
5,814
5,825
5,354
5,355
5,382
5,431
5,453
5,554
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5,557
5,560
5,880
5,889
5,920
5,924
5,954
5,964
5,987
6,025
6,051
6,079
6,109
6,125
6,133
6,134
6,139
6,271
6,282
6,314
6,346
6,381
6,403
6,436
6,470
6,482
6,499
6,512
6,547
6,626
6,681
6,712
6,717
6,745
6,764
6,787
6,799
6,921
6,948
7,021
7,085
7,150
7,170
7,185
7,216
7,217
7,229
7,232
7,250
7,300
7,322
7,328
7,329
7,362
7,387
7,392
7,393
7,408
7,430
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7,792
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8,324
8,328
8,435
8,458
8,464
8,479
8,522
8,541
8,583
8,604
8,612
8,363
8,367
8,371
8,398
8,414
8,416
8,419
8,427
8,614

[fol. 80]

Northern Pacific Railway Company—Montana Contracts

Contract Nos.

8,622
8,644
8,665
8,678
8,684
8,685
8,686
8,688
8,717
8,732
8,782
8,827
8,828
8,843
8,845
8,846
8,885
8,907
8,909
8,917
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8,943
8,990
9,017
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9,112
9,114
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9,163
9,166
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10,375
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10,371

[fol. 81] Northern Pacific Railway Company—Montana Contracts

Contract Nos.

10,382
10,384
10,385
10,387
10,388
10,389
10,391
10,393
10,400
10,403
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10,412
10,425
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[fol. 82] Northern Pacific Railway Company—Montana Contracts

Contract Nos.

11,172
11,173
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APPENDIX V TO REQUESTS

Oil and Gas Permits and Leases

T & M Number	Party	Date
847	W. R. Calvert	5-5-17
903	Charles Wrightman	4-11-18
952	Ben Grote and H. Vincent	5-20-19
1,083	A. M. Chisholm	
1,276	Doney Hager	2-20-26
1,282	Geo. Mottman	4-29-26
1,351	Ajulune Oil and Dev. Co.	10-1-27
1,439	Flaming Geyser Gas Co. (NWI)	1-20-29
1,448	Miocene Petroleum Co.	4-15-29
1,449	Miocene Petroleum Co.	4-15-29
1,517	Western Gas and Oil Co.	12-5-30
1,523	R. B. Newbern	5-19-31
1,526	Geo. Mottman	7-9-31
1,569	E. Combs	1-31-33
1,690	H. S. Sachett (NWI)	3-1-34
1,718	G. H. Pierce	5-25-34
1,808	Blue Light Gas and Oil Co.	2-25-37
1,819	Lambert Whitehurst	6-1-37
1,837	California Co.	
1,910	H. J. Jameson	10-11-39
***2,1[illegible]2	Paul John Hunt	8-11-44
2,238	((NWI)	8-31-45
2,239	(Texas Co. (NWI)	8-31-45
2,260	((NWI)	4-30-46
2,304	Union Oil Co.	11-22-46
2,306	Union Oil Co.	11-22-46
2,367	C. M. Eastwood & G. W. Ludwig	8-8-47
***2,396	Union Oil Co. (NWI)	12-31-47
MONTANA		
1,058-A	Tri-City Oil Co.	9-1-20
1,084	Ohio Oil Co.	1-3-21
1,085	Ohio Oil Co.	1-3-21

Oil and Gas Permits and Leases

T & M Number	Party	Date
MONTANA		
1,086	Ohio Oil Co.	1-3-21
***1,694	Ohio Oil Co.	4-1-27
1,697	Lincoln Oil Co.	4-29-27
***1,856	Mont. Dakota Utilities Co.	8-3-28
***1,876	Mont. Dakota Utilities Co.	1-9-29
1,970	Carter Oil Co.	7-1-29
***2,694	Tarrant & Johnson	1-3-27
***2,936	Maris & Hunt	10-18-40
3,097	Carter Oil Co.	4-15-43
***3,265	Wm. M. Hanlon	6-24-46
***3,280	Kidd & Cherry	10-14-46
***3,284	Central Mont. Oil Co.	9-14-46
***3,331	Frank H. Becker	8-14-47
***3,373	Texas Co.	3-15-49
***3,376	Amerada Petroleum Co.	4-18-49
***3,411	Texas Co.	12-15-49

[fol. 84]

T & M Number	Party	Date
WYOMING		
5	Old Colony Oil Co.	4-1-19
7	J. Henderson	4-1-27
8	J. Henderson	5-22-29
*** 9	Continental Oil Co. (Kirk)	6-1-29
*** 11	Continental Oil Co.	11-1-32
*** 14	Resolute Oil Co.	7-13-37
*** 14A	Resolute Oil Co.	11-1-44
*** 21	Mackinnie Oil & Drilling and Continental Oil Co.	8-1-43
*** 24	Carter Oil Co.	6-15-44
28	Fred Goodstein & Continental Oil Co.	4-30-45
*** 29	Continental Oil Co.	12-10-46
30	Seaboard Oil Co.	3-23-48
31	Fred Goodstein & Continental Oil Co.	7-15-49

***Active Contracts

[fol. 85]

APPENDIX VI TO REQUESTS

Coal Leases and Permits

T & M Number	Lessee	Date
WASHINGTON		
2	Washington Mining & Dev. Co.	10-17-91
2	Washington Imp. Co.	7-1-89
2	John Kangley	1889
2	Wilkeson Coal & Coke Co.	6-1-93
4	So. Prairie Coal Co.	7-1-89
6	Tacoma Coal Co.	6-20-84
8	Alton Coal Co.	11-20-91
9	Green River Coal & Coke Co.	7-20-93
11	Eureka Coal Co.	10-2-94
63	Eureka Coal Co.	1-26-97
385	Issaquah Coal Co. (NWI)	1-1-01
388	Cannel Coal Co.	4-1-01
465	Pacific Coal & Oil	3-12-07
477	Fremont Coal Co. (NWI)	5-1-07
484	Independent Coal Co.	7-5-07
487	Coast Coal Co.	8-1-07
490	North Coast Colliery Co.	5-16-07
508	Sam Hyde	9-11-08
514	Commonwealth Coal Co.	10-16-08
515	Black Carbon Coal Co. (NWI)	10-16-08
519	H. Thompson	3-6-09
521	Geo. Bayne	3-30-09
525	Sam Hyde	5-20-09
546	Fred Stevens	1-3-10
551	J. H. Rose	8-8-10
538	Central Coal Co. (NWI)	2-2-10
557	Tanum Coal Co.	11-2-10
576	U.S. Coal Co. (NWI-NP)	5-29-11
578	J. S. McMiniemee	3-21-11
588	W. Oakes (NWI)	4-27-11
602	Busy Bee Mining Co.	6-6-11

Coal Leases and Permits

T & M Number	Lessee	Date
WASHINGTON		
636	American Coal Co.	7-1-12
638	Pacific Coast Coal	3-26-13
642	Deep Lake Coal Co. (NWI)	9-1-11
658	James Anderson	3-26-13
674	H. S. Matthews	8-20-13
686	Sam Hyde	12-8-13
738	Pocahontas Coal & Coke Co.	9-29-14
746	National Coal Company	1-1-15
782	Ind. Coal & Coke (NWI)	11-25-15
805	Joseph Swalwell	7-22-16
819	Carbon Hill Coal Co.	8-30-16
874	J. E. Jones (NWI)	11-8-17
884	Wash. Colliery Co. (NWI)	11-1-17
902	Pac. Coast Coal Co. (NWI)	5-1-18
909	Roslyn Fuel Co.	5-1-18
914	Geo. Rankin	6-10-18
915	Pacific Coast Coal Co.	6-17-18
919	C. J. Smith	9-18-17
926	C. J. Smith (NWI)	7-19-18
932	T. M. Tannett	10-22-18
951	Mashell Coal & Coke (NWI)	1919
[fol. 86]		
1,002	C. J. Smith	8-1-20
1,008	Andrew Reynolds (NWI)	12-22-20
1,023	T. W. Siddle	1-1-21
1,025	Carbon Coal & Clay (NWI)	1-1-21
1,042	Dale Coal Co.	1-27-22
1,053	Salton River Bituminous Coal Co.	1-1-21
***1,110	Fred & Gus Nies	3-22-21
1,115	John Richmond	3-29-23
1,121	Am. Smelting & Refining (NWI)	6-1-23
1,136	J. G. Parkin (NWI)	9-1-23
1,165	C. B. Niblock (NWI)	
1,174	Evan Jones	6-12-24
1,222	S. Mitsumasu	4-23-25

Coal Leases and Permits

T & M Number	Lessee	Date
WASHINGTON		
1,260	Abe Morris (NWI)	9-1-25
1,372	Andrew Reynolds	1-27-28
***1,395	Dale Coal Co.	4-1-28
1,400	Evan Collierie	7-1-28
1,450	James Bolde	5-21-29
1,479	E. R. Peoples	1-1-30
1,481	John Buesch	2-1-30
1,505	J. O. West	7-1-30
1,535	Morris Bros. Coal Mining	11-3-31
1,560	W. Kegler	
1,661	Geo. Savage	1-1-33
1,697	Roslyn Cascade Coal	3-5-34
1,782-1	Dale Coal Co.	5-1-36
1,790	Thomas Bevan	9-15-36
***1,856	Palmer Coking Coal Co.	6-4-38
1,991	Jonesville Coal Co.	9- -41
2,090	L. E. Thomas	1-1-43
2,216	Palmer Coking Coal Co.	10-1-45
2,232	J. B. Miller	1-18-46
2,234	Anderson Coal Mine	9-27-45
2,309	G. C. Olson	1-1-47
2,391	John Lonegan	12-29-47
***3,102	Jeffries Coal Co.	5-5-43
***3,268	Fred & Gus Nies	6-25-46
MONTANA—Northern Pacific		
492	Montana Coal & Coke Co.	1-1-07
545	Western Coal & Coke Co.	11-27-09
563	Julius Berg (Six Mile Coal Co.)	7-1-10
623	Ed Horsky	12-1-11
663	Lee Rouse	6-1-13
714	Frank O'Meara	2-2-14
715	Washington Montana Coal Co.	2-2-14
757	Eureka Dev. Co.	6-9-14
765	T. Nash, et al.	11-15-14

Coal Leases and Permits

T & M Number	Lessee	Date
MONTANA—Northern Pacific		
*** 743 & 790	Roundup Coal Co.	8-23-15
628	Oscar Nelson	6-1-12
809	Charles Augur	12,27-15
811	Iver Johnson	12-1-15
817	Ed O'Donnell	4-7-16
[fol. 87]		
1,045	Blair Collins Co.	6-1-20
1,079	John C. Graham	12-28-20
1,271	Jeffries Coal Mining Co.	9-1-23
1,442	C. D. Ray	11-1-23
1,643	Northwestern Mining & Fuel	7-1-26
1,735	Blair Collins Co.	12-1-27
1,819	Roundup Coal Mining Co.	9-1-28
2,019	Superior Coal Co.	3-1-30
2,957	R. D. Chamberlain	3-5-41
628	Oscar Nelson	6-1-12
699	John A. Murphy	12-1-13
717	E. M. Barnett	1-26-14
770	George Akers	12-29-14
889	Edward H. Kinsey	9-20-17
901	A. A. Morris	2-1-18
943	Wyoming-Montana Co.	12-19-18
989	Frank J. Stifel	9-1-19
1,283	Charles B. Foncanon	8-1-23
NORTH DAKOTA		
5,958	John F. Brodie	9-1-16
5,988	Lehigh Mining Co.	4-1-23
***5,993	Lehigh Briquetting Co.	8-1-27
NORTHWESTERN IMPROVEMENT CO. CONTRACTS		
9 (450)	W. H. Co.	12-2-05
11 (48)	Carbon Coal Co.	7-8-96
15 (333)	Miners Coal & Coke Co.	9-1-99
16 (363)	South Prairie Coal Co.	6-28-00
225 (482)	Fleet Coal Co.	8-31-07
*** 863-N	Frank J. Binek	
*** 915	Pacific Coast Coal Co.	

Coal Leases and Permits

T & M Number	Lessee	Date
Northwestern Improvement Co. Contracts		
1,038	Thomas Gray	11-20-15
1,271	Pacific Coast Coal Co.	6-17-18
1,277 (902)	J. E. Jones	5-1-18
1,295	T. M. Tennent	10-22-18
1,375	Edmund B. Hubard	1-31-20
1,437 (1002)	C. J. Smith	8-1-20
1,472 (1025)	Carbon Coal & Clay Co.	1-1-21
1,652 (1164)	John C. Eden	4-1-24
***1,661 & 2,066	George Savage	
1,692 (1217)	Ind. Coal & Coke Co.	1-1-25
***1,920	Hyde Coal Co.	
***1,962 (2404)	Renton Mining Co.	3-25-41
2,011 (1507)	Kangley West Coal Co.	11-29-30
2,083	Ray E. Ross	4-1-35
***2,085	Issaquah Coal Co.	
2,088	George Savage	1-1-33
2,131	R. A. Evans	4-8-36
***2,193 (2454)	James Bolde	1-1-45
***2,221	M. B. Cavanaugh	
2,303	Palmer Coking Coal Co.	6-4-38
***2,309	G. C. Olson	
***2,514	John L. Lanigan	12-29-47

***Active Contracts

[fol. 88] APPENDIX VII TO REQUESTS

Iron Ore

T & M Number	Lessee	Date	Acres
	Northern Pacific and Northwestern Improvement Co. Leases		
82-D	Butler Bros.	10-2-16	40
84-D	Republic Iron & Steel Co.	8-27-17	40
***428-D	Hanna Ore Mining	6-1-29	280
449-D	Charleson Iron Co.	9-1-32	80
485-D	Charleson Iron Co.	12-15-37	120
***487-D	Balkan Mining Co.	3-28-38	80
489-D	George H. St. Clair	9-10-38	140
489-D-1	Inland Steel Co.	10-10-38	60

Iron Ore

T & M Number	Lessee	Date	Acres
	Northern Pacific and Northwestern Improvement Co. Leases		
490-D	Carl Hedman	10-6-38	40
508-D	C. H. Taylor	3-10-43	40
***538-D	Pacific Isle Mining Co.	6-7-46	60
***546-D	Republic Steel Co.	8-15-47	20
***551-D	Pacific Isle Mining Co.	7-1-48	60
***555-D	W. S. Moore Co.	2-21-49	40
***557-D	W. S. Moore Co.	4-1-49	40
***561-D	Oliver Iron Mining Co.	7-1-49	40
***565-D	Hanna Coal & Ore Corp.	9-22-49	40
***566-D	W. S. Moore Co.	12-1-49	40
***567-D	Bennett Mining Co.	12-1-49	40
	Cuyuna Realty Co. Leases		
4	Biwango Mining Co.	5-11-16	80
*** 7A	R. M. Adams	10-1-23	80
	Assigned: Evergreen Mining Co.	6-2-24	
	Assigned: Evergreen Mines Co.	1-2-32	
9	Merrimac Mining Co.	6-13-14	80
9	Hill Mines Co.	9-30-16	280
14	E. J. Longyear Co.	8-28-15	80
*** 27	R. B. Whiteside	10-1-23	80
	Assigned: Hanna Iron Ore Co.	10-1-29	
*** 45	Hanna Iron Ore Co.	11-1-29	160
50	Evergreen Mines Co.	5-1-37	40
51	Ashland Mining Co.	4-20-38	40
	Cuyuna Realty Co. and Northwest Improvement Co. Joint Leases		
*** 57	Evergreen Mines Co.	11-19-42	160
	Cuyuna Realty Co., Crow Wing Realty Co., Mesabi Realty Co., and Northwest Improvement Co.		
*** 46	Hanna Iron Ore Co.	11-1-29	4,041

***Active Contracts

[fol. 89] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

STIPULATION RE TAKING OF DEPOSITIONS—September 18, 1951

It Is Hereby Stipulated and Agreed by and between the undersigned counsel for the parties to the above entitled action that defendants may take the oral deposition of John M. Hughes of Hudson, Wisconsin, witness on behalf of defendants, at Room 1006 Northern Pacific Railway Building, 176 East Fifth Street, St. Paul, Minnesota, beginning at 10:00 A.M. on September 27, 1951, before Frank J. Gould, an officer authorized to administer oaths under the laws of the State of Minnesota.

Dated at Seattle, Washington, September 18, 1951.

C. L. Whittinghill, Attorneys for Plaintiff.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

[fol. 90] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS UNDER RULE 36—Filed January 14, 1952

Defendants hereby respond as follows to plaintiff's Request for Admissions under Rule 36 served on defendants on August 10, 1951:

Response to Request I—Timber land sales.

By way of explanation of the form of this response defendants direct attention to the fact that plaintiff has divided Request I and the Appendix thereto into eight subdivisions, lettered A through H, and that in many instances a sale listed in one subdivision of Appendix I is also listed in one or more other subdivisions. For example, of the 42 contracts listed in Appendix I-A, 40 also appear in Appendix I-B and 31 appear in Appendix I-E. Obviously, therefore, there are not only many cases of duplication of a particular contract throughout these subdivisions, but also a repetition of the acreage and timber volumes involved in the same contract. Actually, there is a total of 75 contracts, an estimated 2,144,177 acres and an estimated 21,544,766,000 feet, board measure, of timber listed in this request. In order to avoid confusion in this matter defendants attach hereto Exhibit A, which lists all of the contracts set forth in all of the subdivisions of Appendix I by [fol. 91] number, date and party, and under the alphabetical headings A through H there is indicated by an x opposite each contract the instances in which the plaintiff claims that a particular clause is contained in the contract.

Responding directly to Request I, defendants, except as hereinafter qualified or denied, admit the following matter contained in the Request:

1. The making of the contracts for sale of timber land listed on Exhibit A.

2. That the contract number, date and name of vendee are correctly shown on said exhibit.

3. That the estimates of acreage and timber volumes claimed by plaintiff to be involved in each contract, (which estimates are reproduced on Exhibit A for each contract), are reasonable estimates.

4. That the total number of acres and the total number of board feet are correctly computed in each subdivision of Request I and in each subdivision of the Appendix thereto.

5. That where so indicated by an x under the alphabetical headings on Exhibit A, the particular contract contains the underscored language, or a slight variation thereof, set forth in the corresponding subdivision of Request I.

6. Defendants admit that defendant Improvement Company or its predecessor made the sales in the instances where the contract number shown in the Appendix to Request I is prefixed by the letter N, and admit that the defendant Railway Company or its predecessor made the sales in all other instances.

[fol. 92] Defendants qualify the foregoing admissions and deny the matter in Request I to the extent and in the language contained under the heading "Qualifications and Denials" on said Exhibit A.

Further, defendants specifically deny:

(a) That in any case is the language underscored in any of the subdivisions of Request I a complete statement of a covenant or agreement contained in the contract;

(b) That in any case is the language underscored in any of the subdivisions of Request I a complete statement of the routing agreement contained in the contract; and

(c) That any combination of the clauses underscored in the various subdivisions of Request I which are contained in the same contract is a complete statement of the routing agreement contained in the contract.

Defendants further deny that they or their predecessors were joined as parties to any of the contracts described in the Appendix to Request I.

Response to Request II—Timber sales.

By way of explanation of the form of this response defendants direct attention to the fact that plaintiff has divided Request II and the Appendix thereto into 9 subdivisions, lettered A through I, and that in many instances a contract listed in one subdivision of Appendix II is also listed in one or more other subdivisions. For example, of the 179 contracts listed in Appendix II-A, 95 are also listed in Appendix II-B and 12 appear in Appendix II-C. Here again, therefore, it is true that there are many cases of du-[fol. 93] plication of acreage and timber volumes involved in the same contract. In the interest of clarity, defendants therefore attach hereto Exhibit B, which lists all of the contracts listed in all of the subdivisions of Appendix II by number, date and party, and under the alphabetical headings A through I there is indicated by an x the instances in which the plaintiff claims that a particular clause is contained in the contract, and in the extreme left hand column of said exhibit there is indicated by an asterisk each instance in which the plaintiff claims a particular contract was "in effect and subsisting" or "active". Actually, there is a total of 210 contracts, 394,135 acres and 6,053,822,871 board feet involved in the contracts listed in Request II.

Responding directly to Request II, defendants, except as they hereinafter qualify or deny the same, do hereby admit the following matter contained in Request II:

1. The making of the contracts for sale of timber listed on Exhibit B.

2. That the contract number, date and name of vendee are correctly shown on said exhibit.

3. That the estimates of acreage and timber volumes claimed by plaintiff to be involved in each contract, (which estimates are reproduced on Exhibit B of each contract), are reasonable estimates.

4. That the total number of acres and the total number of board feet are correctly computed in each subdivision of Request II and in each subdivision of the Appendix thereto.

[fol. 94] 5. That where so indicated by an x under the alphabetical heading on Exhibit B the particular contract contains the underscored language, or a slight variation thereof, set forth in the corresponding subdivision of Request II.

6. That where an asterisk appears in the left-hand column of Exhibit B the contract listed on the same line was "in effect and subsisting" or "active".

7. Defendants admit that defendant Improvement Company or its predecessor made the sales in the instances where the contract number shown in the Appendix to Request II is prefixed by the letter N and admit that the

defendant Railway Company or its predecessor made the sales in all other instances.

The defendants qualify the foregoing admissions and deny the matter in Request II to the extent and in the language contained in the heading "Qualifications and Denials" on said Exhibit B.

Further, defendants specifically deny:

(a) That the language underscored in subdivisions C, D and F of said Request is a covenant or agreement or is a statement of any fact.

(b) That in any case is the language underscored in any of the subdivisions of Request II a complete statement of a covenant or agreement contained in the contract;

(c) That in any case is the language underscored in any of the subdivisions of Request II a complete statement of the routing agreement contained in the contract; and

[fol. 95] (d) That any combination of the clauses underscored in the various subdivisions of Request II which are contained in the same contract is a complete statement of the routing agreement contained in the contract.

Defendants further deny that they or their predecessors were joined as parties to any of the contracts described in the Appendix to Request II.

Response to Request III—Mineral Land Leases.

In explanation of the form of this response defendants direct attention to the fact that plaintiff has divided Request III and the Appendix thereto into six subdivisions, lettered A through F, and that in many instances a lease listed in one subdivision of Appendix III is also listed in one or more other subdivisions, with a consequent repetition of the same acreage through the various subdivisions. Actually, there is a total of 63 leases and 42,466 acres covered by this Request. In the interest of clarity, therefore, defendants attach hereto Exhibit C, which lists all of the leases listed in all of the subdivisions of Appendix III by number, date and lessee and under the alphabetical headings A through F there is indicated by an x the instances in which the plaintiff claims that a particular clause is contained in the lease. There is also indicated by an asterisk in the extreme left-hand column on said Exhibit C the instances in which plaintiff claims a particular lease was "in effect and subsisting" or "active".

Responding directly to Request III, defendants, except as they hereinafter qualify or deny, do hereby admit the [fol. 96] following matter contained in said Request:

1. The making of the leases listed on Exhibit C.

2. That the lease number, date and name of lessee are correctly shown on said exhibit.

3. That the acreage claimed by plaintiff to be involved in each lease, (which acreages are reproduced on Exhibit C for each lease), is substantially correct.

4. That the following leases contained the language underscored in subdivision B of said Request, or a slight variation thereof:

T&M No.	Date of contract	Lessee
526	6-11-09	Montague J. Bond
1434	8-27-24	Phosphate Products Co.
1859	6-30-38	Coeur d'Alene Extension Mines, Inc.

5. That the following leases contained the language underscored in subdivision F of said Request, or a slight variation thereof:

T&M No.	Date of contract	Lessee
2278	10-1-46	Manufacturers Mineral Co.
2473	5-2-49	Mt. St. Helens Pumice Corp.
2516	11-3-49	The Corliss Kaiser Co.
3328	3-1-48	Silica Products Co., Inc.

6. That where an asterisk appears in the left-hand column of Exhibit C the lease listed on the same line was "in effect and subsisting" or "active".

7. That defendant Improvement Company or its predecessor made the leases in the instances where the lease

number shown in the Appendix to Request III is followed by the letters NWI and that defendant Railway Company or its predecessor made the leases in all other instances. [fol. 97] Defendants, except as admitted in 4 and 5 above, deny that any of the leases listed in any of the subdivisions of Appendix to Request III contained the language underscored in any of the subdivisions of Request III.

Further, defendants specifically deny:

(a) That the language underscored in subdivisions B, C, D and E of said Request is a covenant or agreement or is a statement of any fact.

(b) That in any case is the language underscored in any of the subdivisions of Request III a complete statement of a covenant or agreement contained in the contract;

(c) That in any case is the language underscored in any of the subdivisions of Request III a complete statement of the routing agreement contained in the contract; and

(d) That any combination of the clauses underscored in the various subdivisions of Request III which are contained in the same contract is a complete statement of the routing agreement contained in the contract.

Defendants further deny that they or their predecessors were joined as parties to any of the contracts described in the Appendix to Request III.

Response to Request IV—Grazing Land Leases.

Responding to Request IV, defendants admit that during the period 1920 through 1948 there were under lease from one or the other of the defendants, or a predecessor of one of them, more than a million acres of grazing land and that each of such leases contained the covenant or agreement quoted in said Request, or a slight variation [fol. 98] thereof. Defendants also admit that during the year 1949 at least 1000 leases containing such covenant or agreement, including those listed in Appendix IV of said Request, covering more than a million acres of grazing lands, were in effect and subsisting.

Defendants deny that during each year 1920 through 1948 they or either of them or their predecessors or either of them made leases to others of more than a million acres of grazing lands.

Defendants deny that they or their predecessors were joined as parties to any of the leases described in Appendix to Request IV.

Response to Request V—Oil and Gas Leases.

Responding to Request V, defendants admit that during the period 1918 through 1949 they granted approximately 50 oil and gas permits and leases, including those listed in Appendix V of said Request, covering approximately 150,000 acres of land, and admit that each lease or permit, except as hereinafter qualified or denied, contained the covenant or agreement set forth in said Request, or a slight variation thereof.

Defendants further admit that during the year 1949 at least 19 oil and gas permits or leases containing such covenant or agreement, covering approximately 135,000 acres of land, were in effect and subsisting. Defendants do not know whether all of said lands are oil and gas lands and therefore deny that all of said leases covered oil and gas lands.

[fol. 99] Defendants further deny that the following leases contained paragraphs 1 and 2 of the covenants set forth in Request V:

T&M No.	Party
847	W. R. Calvert
903	Charles Wrightman
952	Ben Grote and E. Vincent
1083	A. M. Chisholm
1058 A	Tri-City Oil Co.
5	Old Colony Oil Co.

Defendants further deny that the following lease contains paragraph 1 of the covenant set forth in Request V:

T&M No.	Party
1282	Geo. Mottman

Defendants further deny that they or their predecessors were joined as parties to any of the leases described in the Appendix to Request V.

Response to Request VI—Coal Land Leases

Responding to Request VI, defendants, except as hereinafter qualified or denied, admit that one or the other of them during the period 1889 through 1949 granted all of the coal land leases listed in the Appendix to Request VI.

Defendants state it to be the fact that they are unable to find any record of the following leases listed in said Appendix to Request VI, and therefore deny the granting of the same:

T&M No.	Lessee	Date
(Washington)		
638	Pacific Coast Coal Co.	3-26-13
1110	Fred and Gus Nies	3-22-21
9	W. H. Co.	12- 2-05
11	Carbon Co.	7- 8-96
15	Miners Coal & Coke Co.	9- 1-99
[fol. 100]		
16	So. Prairie Coal Co.	6-28-1900
863 N	Frank J. Binek	no date
1038	Thos. Gray	11-20-15
1271	Pacific Coast Coal Co.	6-17-18
1277	J. E. Jones	5- 1-18
1295	T. M. Tennent	10-22-18
1375	Edmund B. Hubard	1-31-20
1437	C. J. Smith	8- 1-20
1472	Carbon Coal & Clay Co.	1- 1-21
1652	John C. Eden	4- 1-24
1692 N	Ind. Coal & Coke Co.	1- 1-25
1962	Renton Mining Co.	3-25-41
2404	Renton Mining Co.	3-25-41
2011	Kangley West Coal Co.	11-29-30
2454	James Bolde	1- 1-45
2083	R. E. Ross	4- 1-35
2088	Geo. Savage	1- 1-33
2131	R. A. Evans	4- 8-36
2303	Palmer Coking Coal Co.	6- 4-38
2514	John R. Lanigan	12-29-47

Defendants admit that the coal land leases, the granting of which is hereinabove admitted, cover a total of 78,709 acres, but state it to be the fact that of such acreage over one-half was covered by two or more leases listed in said Appendix at different intervals of time, and therefore defendants deny that during such period their total ownership of coal lands subject to lease was as much as 75,000 acres.

Defendants admit that the following coal land leases listed in said appendix contained the covenant or agreement, or a slight variation thereof, set forth in Request VI:

T&M No.	Lessee	Date
(Montana)		
3102	Jeffries Coal Co.	5- 5-43
3268	Fred & Gus Nies	6-23-26

Defendants admit that all of the coal land leases described in said Appendix as being active were in effect and subsisting during the year 1949, except the following:

[fol. 101]

T&M No.	Lessee	Date
(Washington)		
1110	Fred and Gus Nies	3-22-21
863 N	Frank J. Binek	no date
1962	Renton Mining Co.	3-25-41
2404	" " "	"
2454	James Bolde	1-1-45
2514	John R. Lanigan	12-29-47

Defendants, being unable to locate any record of the foregoing six leases, deny that said leases were in effect and subsisting during the year 1949. Further, defendants, being unable to find a record of said six leases, are unable to ascertain how many acres of coal lands were covered by leases in effect and subsisting during the year 1949, and therefore deny that such leases covered approximately 10,000 acres.

Except as hereinabove admitted, defendants deny that any of said coal land leases contained the covenant or agreement set forth in Request VI.

Defendants deny that they were joined as parties in any of such leases.

Response to Request VII—Iron Ore Land Leases

Responding to Request VII, defendants admit that during the period 1914 through 1949 one or the other of them or a subsidiary of one of the defendants granted the 30 leases listed in the Appendix to Request VII, covering substantially 6,461 acres of iron ore land, and that such leases contained the covenant or agreement set forth in Request VII.

Defendants admit that during the year 1949 at least 16 leases, containing such covenant or agreement and covering approximately 5,261 acres of iron ore land, were in effect and subsisting.

Defendants deny that they were joined as parties in [fol. 102] any of such leases.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

Copy received Jan. 11, 1952.

Robert H. Weinstein, Counsel for plaintiff.

Duly sworn to by Harold G. Boggs (Jurat omitted in printing).

[fol. 103]

(89)

EXHIBIT "A" TO RESPONSE

RESPONSE TO REQUEST FOR ADMISSIONS

TIMBER LAND SALES

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract.								Qualifications and Denials
						A	B	C	D	E	F	G	H	
W-9652	3-12-23	Wash.	North Bend Lbr.Co.	3,133	46,985,000	x	x							
9713	4-22-24	"	Buckley Logging Co.	1,275	19,125,000	x	x			x				
9726	9-8-24	"	Carlson Logging Co.	1,640	13,000,000	x	x							
9766	11-20-25	"	Dalkena Lbr.Co.	2,991	16,725,000	x	x							
9769	12-21-25	"	Howe-McGibbon Tbr.Co	1,200	18,000,000	x	x							
9778	4-9-26	Wash.& Idaho	Panhandle Lbr.Co. Ltd.	4,609	37,230,000	x	x			x				
9897	5-24-29	Wash.	Eller Lbr.Co.	1,190	17,850,000	x	x							
10116	10-2-34	"	Wall Bros.Logging Co	558	8,370,000	x	x			x	x		x	
10139	8-20-35	"	Panhandle Lbr.Co.Ltd	1,864	27,960,000	x	x			x				
10143	11-1-35	"	No.Pac.Tbr.Oprs,Inc.	990	14,850,000	x	x			x	x		x	
10178	8-14-36	"	Seattle Export Lbr.Co	652	9,780,000	x	x							
10224	8-9-37	"	Tacoma-Eastern Tbr.Co	593	8,895,000	x	x					x		
10270	6-8-39	"	F.P.Etheridge	400	10,468,000	x	x			x	x		x	
10281	10-2-39	"	Cascade Tbr.Co.	2,236	100,000,000	x	x		x	x	x		x	
10285	11-10-39	"	St Paul & Tacoma Lbr.Co.	450	6,750,000	x	x			x				
10309	5-27-40	"	" "	240	2,380,000	x	x			x				
10320	9-11-40	"	Walton Lbr.Co.	640	30,480,000	x	x			x	x		x	
10331	11-12-40	"	St Paul & Tacoma Lbr.	640	9,600,000	x	x			x				
10332	11-14-40	"	M.C.Miller Lbr.Co.	640	9,600,000	x	x			x	x		x	
10339	3-17-41	"	St Paul & Tacoma Lbr.	640	9,600,000	x	x			x				
10340 & N-482	4-1-41	"	" "	3,165	47,475,000	x	x			x				
10400	10-30-41	"	Bloedel-Donovan Lbr.Mills	305	4,575,000	x	x			x	x		x	
10412	2-1-42	"	St Paul & Tacoma Lbr.	1,194	17,910,000	x	x			x				
10429	7-15-42	"	E.D.Walton	640	9,600,000	x	x			x	x		x	
10447	2-9-43	"	St Paul & Tacoma Lbr.	642	9,630,000	x				x				
10466	8-30-43	"	" "	1,440	52,581,000	x	x			x	x	x	x	
10468	10-25-43	"	Clarence P.Wise			x								Not a timber sale. In Roza Irrigation Dist.
10579	3-29-45	"	St Paul & Tacoma Lbr	1,281	19,215,000	x	x			x	x	x	x	
10588	8-9-45	"	" "	640	9,600,000	x	x			x				
10682	1-20-47	"	" "	383	3,288,000	x	x			x	x	x		
10700	9-23-47	"	" "	643	9,645,000	x	x			x				
10753	9-13-48	"	" "	295	228,000	x	x			x				
N-213	1-7-28	"	" "	698	36,658,000	x	x			x				
N-262	9-26-29	"	" "	1,280	81,481,000	x	x							
N-343	4-27-34	"	" "	40	1,004,000	x	x			x				Cont.contains no routing clause.
N-410	7-10-37	"	" "	560	18,273,000	x	x			x				
N-416	11-5-37	"	" "	4,333	154,115,000	x	x							
N-475	11-7-40	"	" "	640	37,061,000	x	x			x				
N-480	2-20-41	"	" "	360	15,493,000	x	x							

TIMBER LAND SALES
Sheet 2

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract.								Qualifications and Denials
						A	B	C	D	E	F	G	H	
N-481	3-18-41	Wash.	St Paul & Tacoma Lbr.Co.	708	30,601,000	x	x			x				
N-482	4-1-41	"	" "	1,408	67,261,000	x	x			x				
N-589	2-7-46	"	" "	640	49,497,000	x	x			x				
2472	7-1-97	Mont.	Big Blackfoot Milling Co.	41,152	167,241,000		x				x			Neither B nor F in routing clause
2732	6-14-98	"	" "	10,124	41,143,000		x				x			"
3881	8-31-01	"	" "	150,432	611,355,000		x				x			"
4023	3-31-02	"	" "	184,375	571,164,000		x				x			"
4535	6-30-03	"	" "	620,747	2,700,000,000		x				x			"
4734	6-30-04	"	" "	1,600	9,440,000		x				x			"
4932	9-7-07	"	" "	11,927	53,017,500		x				x			"
5861	10-30-09	"	" "	5,689	17,797,000		x				x			"
9645	12-15-22	Wash.	J.Neils Lbr.Co.	4,148	62,220,000		x			x				
9758	8-28-25	"	White River Lbr.Co.	8,676	130,140,000		x	x						
9800	9-8-26	"	J.Neils Lbr.Co.	120	1,800,000		x			x				
9936	2-25-39	"	Pac.Natl Lbr.Co.	625	14,597,000		x							
10067	7-1-33	"	McGoldrick Lbr.Co.	8,538	48,850,000		x	x			x		x	Correct date 2-26-35
10152	2-3-36	"	Ralph Brindley, Trustee	64	960,000		x							
10154	2-29-36	"	Albert Miller	298	4,470,000		x		x					"B" not in contract
10168	7-1-36	"	T.A.Peterman	2,216	33,240,000		x							
10260	2-27-39	"	"	1,198	31,140,000		x							
10302	4-16-40	"	Lindberg & Hobi Co	36,385	545,775,000		x	x	x	x	x	x	x	
10319	8-28-40	"	T.A.Peterman	480	7,200,000		x							This cont. was never executed.
10346	5-29-41	"	"	4,904	73,560,000		x							
10447	2-9-43	"	St Paul & Tacoma Lbr.Co.	642	9,630,000		x			x				
10463	9-30-43	"	Lindberg & Hobi	840	12,600,000		x	x		x	x	x	x	
10464	8-30-43	"	T.A.Peterman	28,333	21,600,000		x	x			x		x	
10486	6-6-44	"	W.H.Lindberg	2,547	38,105,600		x	x	x	x	x	x	x	
N-150	3-24-24	"	St Paul & Tacoma Lbr	600	9,000,000		x							Carlisle Lbr.Co. cont. Not St P. & T.Lbr.Co.
N-281	6-5-30	"	Klement & Kennedy	643	9,045,000		x							
N-476	11-1-40	"	West Coast Plywood Co	641	9,615,000		x			x	x		x	
N-488	5-9-41	"	Mutual Lbr.Co.	201	3,015,000		x			x	x		x	
N-580	3-28-45	"	St Paul & Tacoma Lbr.	480	21,228,000		x							
2040 or 2047	1-20-38	Idaho	Winton Lbr.Co.	21,440	50,000,000		x			x	x		x	2040 is not Winton Lbr. Co.contract.
2089	5-8-45	"	Pack River Tbr.Co.	34,828	75,000,000		x	x		x	x	x	x	
10249	4-15-38	Wash.	Diamond Match Co.	9,168	53,380,000					x				
2066	9-26-40	Idaho	" " "	2,240	33,600,000					x				Correct date 10-14-40
	1-3-00	Wash.	Frederick Weyerhaeuser	900,000	14,981,000,000		x							

Total: 2,144,177 acres

21,544,766,000 bd.ft.

EXHIBIT "B" TO RESPONSE

RESPONSE TO REQUEST FOR ADMISSIONS

TIMBER SALES

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claimsare included in the contract. A	B	C	D	E	F	G	H	I	Qualifications and Denials
T&M 3	2-19-95	Wash.	E.A.Stroup,et al	160	9,800,000	x									
13	5-2-88	"	St Paul & Tacoma	53,385	800,775,000	x	x								
17	7-18-87	"	White River Shingle Company	320	6,800,000	x	x								Appendix "B" lists footage as 4,800,000
55	11-18-96	Idaho	A.A.Crane & Goode	6,690	100,350,000	x	x								
64	12-31-96	"	" "	800	12,000,000	x	x								
261	2-19-97	"	Sand Point Lbr.Co.	25,000	375,000,000	x	x								
458	10-16-06	"	Humbird Lbr.Co.	10,560	37,140,000	x	x								"A" clause does not appear.
530	6-1-09	Wash.	Manley-Moore Lbr.Co.	200	3,000,000	x	x								Wn.Mfg.Co.contract - R/W for logging road assigned to Manley-Moore No routing clause
553	1-13-10	"	" " " "	120	1,800,000	x	x								Cont.with Ore-Wash. Navigation Co. RR R/W No routing clause.
585	6-12-11	"	August Van Banklin	640	9,600,000	x	x	x	x						
609	12-4-11	"	Manley-Moore Lbr.Co.	1,920	28,800,000	x	x	x	x						
632	9-4-12	"	Pacific States Lbr.Co.	560	8,400,000	x	x								
638	9-14-12	"	Manley-Moore Lbr.Co.	1,920	28,800,000	x	x	x	x						
648	12-21-12	"	Ellensburg Lbr.Co.	320	4,800,000	x	x	x	x						
679	9-15-13	"	Pacific States Lbr. Company	640	9,600,000	x	x								
690	12-29-13	"	Cascade Tbr.Co.	1,120	16,800,000	x	x	x	x						Cascade Lbr.Co.
693	12-1-13	"	Manley-Moore Logging Company	1,920	28,800,000	x	x	x	x						Reconveyed to NP Ry.Co.
744	1-29-13	"	Miller Brothers	200	3,000,000	x	x	x	x						Correct date 1-29-15
753	3-16-15	"	Issac Garrison	640	9,600,000	x						x		x	"G" does not appear in contract.
809	7/31/16	"	Pac.States Lbr.Co.	840	12,600,000	x	x								
816	9-30-16	"	Somers Bros.Mfg.Co.	4,650	66,316,995	x	x								
822	10-18-16	Idaho	Dalkena Lbr.Co.	500	7,500,000	x	x					x			"G" does not appear in contract
823	10-18-16	"	" " "	280	4,200,000	x	x								
855	7-10-17	Wash.	Cascade Lbr.Co.	320	4,800,000	x					x				
904	5-10-18	"	Hanaford Creek Lg.Co.	1600	24,000,000	x	x				x				
931	10-30-18	"	Mutual Lbr.Co.	1,300	4,500,000	x	x				x				
1026	4-28-21	"	W.G.McAvoy	80	1,346,500	x	x								
1050	3-27-22	"	Lake Sawyer Lbr.Co.	120	1,800,000	x	x								
1078	6-16-22	"	E.P.Nevkirchen	80	1,200,000	x	x								
1107	3-29-23	"	Allen & Nelson Mill Co.	300	4,500,000	x	x								
1110	4-18-23	"	Seaboard Tbr.Co.	600	9,000,000	x	x								
1119	5-25-23	"	R. Rasmussen	80	1,200,000	x	x								
1124	6-20-23	"	Lake Sawyer Lbr.Co.	560	8,400,000	x	x								
1144	11-5-23	"	" " "	600	9,000,000	x	x								
1147	12-15-23	"	Manley-Moore Lbr.Co.	880	13,200,000	x	x								
1154	2-25-24	"	North Paiix Shgl.& Lbr.Co.	160	2,400,000	x	x								

TIMBER SALES -
Sheet 2.

						Clauses underscored in Request which plaintiff claims are included in the contract.									
Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	A	B	C	D	E	F	G	H	I	Qualifications and Denials
T&M 1157	3-7-24	Wash.	P.Rasmussen	120	1,800,000	x	x								
1158	3-14-24	"	J.S.Pedersen	240	3,600,000	x	x								
1179	7-1-24	"	Manley-Moore Lbr.Co.	160	2,400,000	x	x								
1195	12-9-24	"	Buckley Lbr. & Shgl.Co.	640	9,600,000	x	x								
1196	1-1-25	"	Trap Crk Log.Co.	320	4,800,000	x	x								
1200	2-25-25	"	McMillan Lbr.Co.	620	11,000,000	x	x			x			x		E & H clause not found in contract.
1211	3-14-25	"	Lake Sawyer Lbr.Co.	40	600,000	x	x								
1224	4-29-25	"	Johnson Bros.Co.	80	1,200,000	x	x								
1226	5-7-25	"	Silver Lake Ry. & Lbr.Co.	80	1,200,000	x	x								
1250	9-12-25	"	M.C.Miller Lbr.Co.	640	9,600,000	x	x								
1252	9-26-25	"	Cabin Creek Lbr.Co.	1,242	40,485,000	x	x								
1267	1-23-25	"	High Point Mill Co.	200	3,000,000	x	x								
1269	1-25-26	"	Manley-Moore Lbr.Co.	300	4,500,000	x	x								
1279	3-31-26	"	Dalkena Lbr.Co.	120	1,800,000	x	x								
1281	3-1-26	"	Manley-Moore Lbr.Co.	5,014	229,254,000	x	x								
1321	3-10-27	"	Pac.States Lbr.Co.	6,607	99,105,000	x	x								No routing clause
1325	4-27-27	"	A.V.Lbr.Co.	320	4,800,000	x	x								
1343	6-22-27	"	Wm. Pierce	160	2,400,000	x									Cont.covers cordwood only
1344	8-1-27	"	I.G.Naylor	160	2,400,000	x	x								
1353	10-3-27	"	Lake Sawyer Lbr.Co.	651	9,765,000	x	x								
1371	1-23-28	"	Covington Crk.Lbr.Co.	560	8,400,000	x	x								
1374	2-18-28	"	J.Pinkham Lbr.Co.	640	9,600,000	x	x								
1377	3-8-28	"	Preston Mill Co.	640	9,600,000	x	x								
1387	5-31-28	"	High Point Mill Co.	360	5,400,000	x	x							x	"I" clause not in cont.
1398	8-3-28	"	George Jones	200	3,000,000	x	x								
1410	7-31-28	"	Manley-Moore Lbr.Co.	2680	157,299,465	x	x								
1444	4-16-29	"	Lake Sawyer Lbr.Co.	80	1,200,000	x	x								
1445	4-19-29	"	John M.Stoger	200	2,010,250	x	x								
1452	5-23-29	"	North Bend Tbr.Co.	40	600,000	x	x								
1453	6-8-29	"	Wood & Iverson	920	17,693,000	x	x								
1457	6-8-29	"	M.C.Miller Lbr.Co.	560	8,400,000	x	x								
1461	7-30-29	"	Gauthier Bros.	472	4,713,500	x	x								Cont.made to "Chas.A.Lau
1464	8-17-29	"	North Bend Tbr.Co.	281	4,215,000	x	x								
1469	9-25-29	"	Long Lake Lbr.Co.	320	4,800,000	x	x								
1472	11-25-29	"	North Bend Tbr.Co.	240	3,600,000	x	x								
1476	12-24-29	"	Jones Lbr.Co.	300	4,500,000	x	x								
1486	3-25-30	"	W.G.Jones	40	712,000	x	x								
1530	9-2-31	"	Ellensburg Lbr.Co.	80	1,200,000	x	x				x	x		x	
1542	2-1-32	"	St Paul & Tacoma	390	5,850,000	x	x				x				Canceled 1942
1557	8-8-32	"	V.Gattavara	320	4,800,000	x	x				x	x		x	
1568	1-26-33	"	Carbon River Shgl Co.	120	1,800,000	x	x							x	
1584	6-2-33	"	North Bend Tbr.Co.	340	5,100,000	x	x								
1586	6-6-33	"	Buckley Lg.Co.	240	3,600,000	x	x							x	"I" not in cont.
1659	6-19-33	"	V.Gattavara	1,510	22,650,000	x	x								

TIMBER SALES
Sheet 3

						Clauses underscored in Request which plaintiff claims are included in the contract.									
Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	A	B	C	D	E	F	G	H	I	Qualifications and Denials
T&M 1660	7-1-33	Idaho	L. Cardiff	4,059	60,885,000	x	x				x	x		x	
1676	12-20-33	Wash.	Kelso Veneer Co.	1,120	16,800,000	x	x								"A" not in cont.
* 1710	6-6-34	"	T.A.Peterman	645	1,300,000	x	x				x				Inactive 1949
1715	6-8-34	"	Fairfax Lbr.Co.	3,690	55,350,000	x	x					x			"A" not in cont.
1728	11-5-34	"	Cascade Lbr.Co.	302	2,987,000	x	x	x							No routing clause
1731	12-18-34	"	St Paul & Tacoma	18,820	282,300,000	x	x								
1731-1	8-1-36	"	" "	400	6,000,000	x	x				x				
1731-2	2-10-37	"	" "	60	900,000	x	x								
* 1731-3	3-8-37	"	" "	588	34,609,000	x	x				x				Expired 1947
* 1731-4	10-22-46	"	" "	320	4,800,000	x	x				x				Inactive 1949
1749	8-20-35	"	Buckley Logging Co.	420	6,300,000	x	x							x	"I" not in cont.
1754	10-1-35	"	North Bend Tbr.Co.	640	9,600,000	x	x								
1761	3-9-36	"	Diamond Match Co.	640	9,600,000	x	x				x	x			
1765	5-6-36	"	Cabin Creek Lbr.Co.	174	2,610,000	x	x				x	x		x	
1766	5-18-36	"	Lewis Lbr.Co.	320	4,800,000	x	x							x	
1771	5-28-36	Idaho	L.Cardiff	160	2,400,000	x	x				x	x			
1776	7-31-36	Wash.	West Fork Tbr.Co.	190	2,850,000	x	x								
1788	10-8-36	"	North Bend Tbr.Co.	1,440	21,600,000	x	x							x	"I" not in cont.
1793	11-25-36	"	Cabin Creek Lbr.Co.	170	2,550,000	x	x				x	x		x	
1807	3-10-37	"	Diamond Match Co.	320	4,800,000	x	x				x	x			
1808	8-22-28	Mont.	Western Lbr.Co.	16,846	158,482,000	x	x	x	x						
1813	5-4-37	Wash.	Wheeler-Osgood Corp	160	1,200,000	x	x							x	"I" not in cont.
1814	5-20-37	"	McGoldrick Lbr.Co.	640	9,600,000	x	x								
1815	5-26-37	"	St.Regis Kraft Co.	620	3,272,000	x	x				x	x		x	
1822	7-1-37	"	M.C.Miller Lbr.Co.	160	2,400,000	x	x				x	x		x	
1826	7-20-37	"	" "	150	2,250,000	x	x				x	x		x	
1828	7-21-37	"	Wilson Bros.Lg.Co.	200	3,000,000	x	x				x	x		x	
1839	12-9-37	"	Brew Mfg.Co.	110	2,912,000	x	x				x	x		x	
1840	12-1-37	"	L.Marenakos,	640	9,600,000	x	x								
1884	5-11-39	"	Everett Pulp & Paper	400	6,000,000	x	x				x	x		x	
1885	5-9-39	"	Ben Cheney Tbr.Co.	640	9,600,000	x	x				x	x		x	
1886	5-22-39	"	M.C.Miller Lbr.Co.	640	9,600,000	x	x				x	x			
1887	5-15-39	"	Joe Walsh & Cascade	320	4,800,000	x									
1890	6-2-39	"	Pac.States Lbr.Co.	320	5,409,000	x	x				x	x		x	
1916	12-14-39	"	M.C.Miller Lbr.Co.	40	600,000	x	x				x	x		x	
* 1919	1-11-40	"	North Bend Tbr.Co.	1,820	22,352,000	x	x				x	x		x	Expired 1946
1924	3-29-40	"	" " "	60	900,000	x	x				x	x		x	
1935	6-13-40	"	M.C.Miller Lbr.Co.	480	7,200,000	x	x				x	x			
1937	7-20-40	"	Kosmos Tbr.Co.	540	10,488,000	x	x				x	x		x	
* 1945	10-3-40	"	Taylor Bros.	480	7,200,000	x	x				x		x	x	"H" not in cont.
1946	10-28-40	"	St Paul & Tacoma	280	4,200,000	x	x				x				
1950	11-19-40	"	Seattle Export Lbr.Co	160	2,400,000	x	x				x	x			
1954	12-19-40	"	Cabin Creek Lbr.Co.	600	9,000,000	x	x				x	x		x	
1955	2-4-41	"	Everett Pulp & Paper	200	765,000	x	x				x	x			
1962	3-17-41	"	Mueller Gregory, Inc.	142	2,130,000	x	x				x	x		x	
1965	3-28-41	"	M.C.Miller Lbr.Co.	160	2,400,000	x	x				x	x		x	

TIMBER SALES

Sheet 4.

	Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	A	B	C	D	E	F	G	H	I	Qualifications and Denials
							Clauses underscored in Request which plaintiff claimsare included in the contract.									
	T&M 1969	3-24-41	Wash.	Joe Walsh & Cascade Lbr.Co.	320	4,800,000	x									Y.P.logs only
	1970	3-24-41	"	" "	560	8,400,000	x									Y.P.logs only
*	1975	5-20-41	"	Crane Creek Lbr.Co.	80	2,935,000	x	x						x		"H" not in cont. Expired 1945
	1997	10-8-41	"	M.C.Miller Lbr.Co.	35	525,000	x	x				x	x			
	2000	10-23-41	"	Crown Zellerbach Corp.	599	10,176,000	x	x							x	
	2003	11-28-41	"	Joe Walsh & Cascade Lbr.Co.	100	1,500,000	x									Y.P.logs only
	2006	12-1-41	"	West Coast Plywood Co	460	6,900,000	x	x				x	x		x	
	2034	4-21-42	"	Northwest Chair Co.	320	4,800,000	x	x				x	x			"A" not in cont.
	2035	4-13-42	"	Timber Dev.Co.	640	11,679,000	x	x								
*	2037	1-2-42	Idaho	Potlatch Forests,Inc.	26,075	312,531,000	x	x				x				
	2059	6-12-42	Wash.	Lincoln Lbr.Co.	280	475,000	x	x				x	x		x	
*	2067	8-6-42	"	E.K.Bishop Lbr.Co.	120	3,314,000	x	x				x				Inactive 1949
*	2072	8-18-42	"	Long Lake Lbr.Co.	2,378	6,382,000	x	x				x				
	2077	10-3-42	"	Alex Cugini	320	855,000	x	x				x	x		x	
*	2080	9-30-42	"	Lyman Lbr.Co. (Soundview Pulp Co)	2,080	60,959,000	x	x								No routing clause in cont. to L.L.Co.
*	2105	5-5-43	Idaho	Ohio Match Co.	320	1,634,000	x	x				x	x			
	2114	6-29-43	Wash.	D.M.Layman	200	423,000	x	x				x	x		x	
	2122	8-30-43	"	Lindberg & Hobi	300	4,500,000	x	x	x	x			x	x		
	2146	6-6-44	"	" "	2,548	38,220,000	x	x								
*	2162	4-17-44	"	Bloedel-Donovan Lbr.Co.	320	4,800,000	x					x				"A" not in agreement
	2177	9-5-44	"	M.C.Miller Lbr.Co.	640	11,436,661	x	x					x		x	
*	2181	10-9-44	"	Ellensburg Lbr.Co.	320	1,378,000	x	x				x	x			
*	2194	3-19-45	"	Harter Lbr.& Fuel Co.	1,582	23,730,000	x	x				x	x		x	Cancelled 1948
	2217	9-14-45	"	Eclipse Mill Co.	1,119	11,825,000	x	x			x	x	x		x	
*	2240	2-23-46	"	St Paul & Tacoma Lbr.Co.	178	2,670,000	x	x				x				Expired 1948 A & I not in cont.
	2253	5-27-46	"	M.C.Miller Lbr.Co.	360	5,400,000	x	x				x	x			
*	2268	7-2-46	"	" "	640	9,600,000	x	x				x	x		x	
	2273	9-17-46	"	Craig L. Spencer	160	5,345,000	x	x				x	x		x	
*	2298	10-18-46	"	Wall Boom,Inc.	480	7,200,000	x	x				x	x			Inactive 1949
*	2316	2-17-47	"	Northwest Door Co.	800	12,000,000	x	x				x	x			Inactive 1949
	2321	2-27-47	"	St Paul & Tacoma Lbr.Co.	80	1,200,000	x	x				x				
*	2326	4-4-47	"	Keene & Keene	1,200	18,000,000	x	x								Not a timber cont. No routing clause.
	2327	4-8-47	Idaho	Diamond Match Co.	160	2,405,000	x	x				x	x		x	
*	2328	4-8-47	Wash.	M.C.Miller Lbr.Co.	640	9,600,000	x	x				x	x			Cancelled.No tbr cut.
*	2329	4-8-47	"	" "	640	9,600,000	x	x				x	x			
	2355	8-8-47	"	St Paul & Tacoma Lbr.Co.	10	150,000	x	x				x	x			
*	2363	8-22-47	"	D.L.Underwood	55	825,000	x	x				x	x			Inactive 1949
*	2372	8-25-47	"	Olympic Hardwood Co.	80	1,209,000	x	x				x	x			
*	2374	10-20-47	"	Wall Boom,Inc.	33	495,000	x	x				x	x			Inactive 1949
	2388	10-30-47	"	Empire Millwork Co.	637	9,585,000	x	x				x	x		x	
	2392	12-24-47	"	B.John Furn.Corp.	115	3,916,000	x	x								No routing clause

TIMBER SALES

Sheet 5

Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	Clauses underscored in Request which plaintiff claims are included in the contract.									Qualifications and Denials
						A	B	C	D	E	F	G	H	I	
* T&M 2419	5-28-48	Wash.	Olson Bros.Lbr.Co.	37	555,000	x	x				x	x			Inactive 1949
* 2425	6-18-48	"	Northwest Door Co.	160	2,400,000	x	x				x	x			
* 2434	7-26-48	"	M.C.Miller Lbr.Co.	108	1,620,000	x	x				x	x		x	Inactive 1949
2436	8-2-48	"	Clarence Avrys	20	300,000	x	x				x	x			
* 2472	4-27-49	"	Cascade Lbr.Co.	13,620	204,300,000	x	x	x	x			x			Not a tbr.sale. Ellensburg Working Circle.
* 2482	6-16-49	"	J.H.Swanberg	260	3,900,000	x	x				x	x		x	
3190W	1-17-45	Idaho	A.R.Johnson	41,600	624,000,000	x	x					x			
3363W	9-1-48	"	Idaho Pole Co.	8,520	127,800,000	x	x	x	x		x	x			Cont.never executed.
832	10-1-45	Mont.	J.Shiffman	1,040	15,600,000	x	x								
* 3230	12-10-45	"	L.D.McFarland	640	9,600,000	x	x					x			
* 3361	7-21-48	"	Wine Glass Ranch	600	1,000,000	x	x				x	x			Cancelled Oct.1949
(NTI Misc. (1821 (T&M 1333	5-26-27		Donald Plummer	640	9,600,000	x	x								"A" not in cont.
"B" Clause															
306	10-10-01	Wash.	Kerry Mill Co.	640	9,600,000		x								Cont.No.should be 396 - No routing clause in 306
1027	5-6-21	"	Cabin Creek Lbr.Co.	1,120	18,210,000		x								
* 1097	12-15-22	"	J.Neils Lbr.Co.	4,082	18,000,000		x				x				
1382	4-30-28	"	Frank Inglis	640	9,600,000		x								
1427	11-30-28	Idaho	Atlas Tie Co.	600	9,000,000		x								
1665	8-29-33	Wash.	Cedar Craft Prod.Co.	40	600,000		x								
* 1817	6-1-37	"	U.S.Plywood Corp.	640	44,113,000		x				x				Inactive 1949
1818	6-1-37	"	" "	1,250	44,113,000		x				x				Letter permit for V. Gattavara to cut tbr. No routing clause.
1841	12-11-37	"	Tbr.Dev.Co.	398	7,713,000		x				x	x		x	
1918	12-27-39	"	Wilkeson Tbr.Co.	320	4,800,000		x				x	x		x	
1935	6-27-40	"	Joe Walsh	1,280	19,200,000		x								"B" not in cont.
1966	4-2-41	"	L.D.McFarland Co.	4,060	60,900,000		x								Letter permit to cut cedar poles. No routing agreement
1979	6-3-41	"	Soundview Pulp Co.	2,392	35,880,000		x				x	x			
1996	11-12-41	"	Northwest Chair Co.	600	9,000,000		x				x	x		x	
2058	6-12-42	"	Lincoln Lbr.Co.	111	18,210,000		x				x	x		x	
* 2088	1-25-43	"	Soundview Pulp Co.	22,335	351,965,000		x				x	x			"F" clause not in cont.
2095	3-16-43	"	Tacoma-Eastern Lbr.Co.	640	9,600,000		x						x		
* 2132	1-1-44	"	North Bend Tbr.Co.	2,722	65,081,000		x		x	x		x			
2141	12-22-43	"	Diamond Match Co.	333	1,687,500		x				x	x			
2163	6-2-44	"	Raymond Lbr.Co.	80	920,000		x						x		
2196	3-19-45	"	Skate Creek Lg.Co.	240	783,000		x				x	x		x	
* 2211	8-11-45	"	Soundview Pulp Co.	8,368	199,654,000		x				x	x			
* 2218	9-17-45	"	" " "	8,497	136,925,000		x				x	x			
* 2429	6-7-48	"	St Paul & Tacoma Lbr.Co.	160	2,400,000		x				x	x			Inactive 1949

TIMBER SALES

Sheet 6.

						Clauses underscored in Request which plaintiff claims are included in the contract.									
Contract Number	Date of Contract	State	Purchaser	Acres	Bd.Ft.	A	B	C	D	E	F	G	H	I	Qualifications and Denials
"C" Clause															
No T&M No.	10-29-34	Wash.	Eatonville Lbr.Co.	3,400	51,000,000			x	x			x			No "C" clause
"E" Clause															
T&M 21	4-18-87	"	Northwestern Lbr.Co.	640	6,000,000					x					
23	9-1-87	"	" " "	1,280	19,200,000					x					
1887	5-15-39	"	Joe Walsh & Cascade Lbr.Co.	320	4,800,000					x					
* 2180	10-9-44	"	V.C.Monahan	320	4,800,000					x					Expired 1946
"F" Clause															
* 2001	10-24-41	"	Seattle Export Lbr.Co.	620	17,603,000						x				Expired 1948. No routing clause in cont. but covered by letters
2154	4-3-44	"	Crane Creek Lg.Co.	80	2,935,000						x	x	x	x	

Total: 394,135 acres

6,053,822,871 bd.ft.

EXHIBIT "C" TO RESPONSE

RESPONSE TO REQUEST FOR ADMISSIONS

MINERAL LAND LEASES

	T&M Number	Date of Contract	State	Lessee	Acres	Clauses underscored in Request which plaintiff claims are included in the contract.					
						A	B	C	D	E	F
	12	11-3-94	Wash.	Jerimiah O'Connor	160	x					
	20	4-1-96	"	H. Middough	160	x	x	x	x		
	46	1-1-96	"	J.T.Mitchell	100	x	x	x	x		
	201	9-28-97	"	Joseph McCabe	120	x					
	443	1-28-05	"	Bell & Price	40	x		x			
	486	10-10-07	"	Bell & Scott	40	x	x	x	x		
	526	6-11-09	"	Montague J. Bond	320	x	x	x	x		
***	532	12-22-08	Mont.	Three Forks Portland Cement	1,000	x	x				
	734	8-1-14	Idaho	P.F.McGovern & M.J.Burns	160	x		x			
	755	5-29-14	Mont.	Edward Horsky,et al	640	x					
	778	4-15-15	Wash.	Lucien F.McComke,Jr.	640	x	x	x	x		
	795	3-27-16	"	O.M.Sinclair	80	x	x	x	x		
	830	5-12-16	Mont.	Frank C. Bailey	40.	x		x			
	958	6-2-19	Wash.	W.E.Jesseph	350	x		x			
***	1029	3-1-21	Wash.	Wilkeson Sandstone Quarry Co.	160	x	x	x	x		
	1118	4-30-21	Mont.	Edward A. Morley	640	x		x			
	1133	8-1-23	Wash.	The Arquetite Products Co.	80	x	x	x	x		
	1211	12-15-25	Mont.	Thomas Myles	640	x					
	1247	8-1-25	Idaho	Paul Leuschel	120	x		x			
	1304	11-1-26	Wash.	The Kittitas Diatomite Co.	80.	x	x				
	1307	8-24-26	"	Alex Allardyse	5,760	x					
	1350	9-15-27	"	Manufacturers Mineral Co.	250	x	x	x	x		
	1369	9-1-26	"	H.A.Helland & C.A.Dawson	200	x		x			
	1434	8-27-24	Mont.	Phosphate Products Co.	560	x		x			
	1567	1-27-33	Wash.	R.B.Kenyon	640	x	x				
	1706	6-1-27	Mont.	G.Henry Bennett	160	x		x			
	1732	12-24-34	Wash.	Mrs. Shingaburow Sato & S. Ogato	80	x	x	x	x		
	1859	6-30-38	Idaho	Coeur D'Alene Extension Mines,Inc.	410	x	x				
	2100	5-11-43	Wash.	John A.Roos	4,800	x		x		x	
	2109	3-17-41	Mont.	F.B.Reser	160	x					
***	2271	6-18-46	Wash.	Shepard & Lambert	120	x		x		x	
	2278	10-1-46	"	Manufacturers Mineral Co.	320	x					x
	2378	10-7-47	"	Columbia Basin Brick & Tile Co.	80		x		x	x	
	2399	1-30-48	Idaho	Silver Buckle Mining Co.	980	x					
***	2412	3-11-48	Wash.	Manufacturers Mineral Co.	50	x	x	x	x		x
	2421	4-30-34	Mont.	R.Giselius & F.W.McDonald	160	x		x			
***	2431	7-7-49	Wash.	Ernest J.Peterson	1,280	x	x				
***	2473	5-2-49	"	Mt.St.Helens Pumice Corp.	400	x					x
***	2516	11-3-49	"	The Corliss Kaiser Co.	80	x	x	x	x		x

Mineral Land Leases

Sheet 2

	T&M Number	Date of Contract	State	Lessee	Acres	Clauses underscored in Request which plaintiff claims are included in the contract.					
						A	B	C	D	E	F
	2704	2-20-37	Mont.	Carl H. Peterson	9,996	x		x		x	
	2802	4-1-39	"	Anaconda Copper Mining Co.	640	x					
	2840	7-1-39	"	S. Standish	1,280	x		x		x	
	2860	10-2-39	"	Joseph T. Farrow	40	x		x		x	
	2939-A	11-6-41	"	Lewis Clark	640	x		x		x	
	2984-A	12-7-42	"	Henry A. Schute	400	x		x		x	
	2986	8-3-41	"	O.F.Martin	160	x					
	3023	3-9-42	"	Elmer Maddux	160	x					
	3030	4-9-42	"	Byron F.Croghan	160	x					
	3033	4-16-42	"	Rupert Voreck	640	x					
	3038	5-4-42	"	Ernest Vetter	640	x		x			
	3045	7-1-42	"	L.F.Teutsch	700	x		x		x	
	3129	10-30-43	"	Mrs.E.Tice Myers	160	x	x				
***	3129A	11-1-48	"	O.F.Martin	160	x					
***	3180	10-23-44	"	Martin Mining Co.	160	x					
***	3184	11-25-44	"	Thomas Myles,Jr.	160	x					
***	3216A	12-15-45	"	Mike DiLulo	400	x		x		x	
***	3241	3-10-46	"	Manganese Products,Inc.	240	x					x
	3283	9-5-46	"	W.D.Moon	1,070	x		x		x	
***	3296	1-3-47	"	Arthur S. Fee	160	x					
***	3302	4-5-47	"	J.A.Denney	160	x					
***	3328	3-1-48	"	Silica Products Co.,Inc.	1,920	x					x
***	3384	8-1-49	"	H.L.Poston	200	x					
***	3399	10-6-49	"	D.A.Grant & A.R.Johnson	160	x					
				TOTAL ACREAGE:	42,466						

[fol. 113] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

STIPULATION RE SOURCES OF FACT INFORMATION AND RELATED MATTERS—Filed November 22, 1952

The parties to this case stipulate as follows:

1. For the purposes of this case the term "preferential routing agreement" shall be deemed synonymous with the term "traffic clause" and is defined to mean any of the clauses substantially in the form set forth in defendants' answer.

2. Information as to the amount of revenues derived by defendant Northern Pacific Railway Company from the transportation of commodities which are or have been subject to a preferential routing agreement, including information as to the revenue figures requested in plaintiff's interrogatories filed August 10, 1951, is either not available to defendants or cannot be furnished by defendants without excessive expense and without consuming an unwarranted length of time. Revenues resulting from the use of preferential routing agreements accrue only to the defendant Railway Company.

3. Information as to the total number of carloads of commodities which are or have been subject to a preferential routing agreement, transported by defendant Northern Pacific Railway Company, is either not available to defendants or cannot be furnished by defendants without excessive expense and without consuming an unwarranted length of time.

4. Defendant Northern Pacific Railway Company furnished, at plaintiff's request, a list of all competitive sta- [fol. 114] tions on its lines of railroad, totaling 226, and pursuant to agreement with plaintiff, representatives of the Federal Bureau of Investigation selected at random, without any suggestion by the Railway Company or by the

plaintiff as to any names to be selected, from the Railway Company's index of industrial leases at said points the names of three lessees at each station, together with the number, date and term of the lease held by each such lessee. And thereafter the said Railway Company furnished to the Federal Bureau of Investigation, along with other information desired by plaintiff, the number of carloads received and forwarded during the calendar year 1949 by each of said lessees. The parties agree that said figures and said information are admissible as proven facts in this case; provided, however, that the party against whom such figures and such information are used may, upon seasonable notice to the other party, have corrected any errors in such figures or information which such party is able to demonstrate.

5. The figures and facts shown in Moody's *Steam Railroads* and in *The Official Guide of the Railways* are accurate and are admissible as proof of the facts they purport to show; provided, however, that the party against whom such figures are used may, upon seasonable notice to the other party, have corrected any errors in such figures which such party is able to demonstrate.

6. Figures or statements purporting to be statements of fact in reports of the Interstate Commerce Commission to Congress, orders and decisions of the Interstate Commerce Commission and of State bodies charged with the duty of regulating common carriers by rail, motor vehicle, air, or water, decisions of Federal and State courts, and reports made pursuant to law by any common carrier to the Interstate Commerce Commission and State agencies charged with the duty of regulating such common carriers are admissible as proof of the facts they purport to show; provided, however, that the party against whom such figures or facts are used may, upon seasonable notice to the other party, have corrected any errors in such figures or facts which such party is able to demonstrate.

[fol. 115] 7. A substantial part of the shipments of commodities shipped from or to premises which are or have been the subject of a sale, contract to sell, or lease containing a preferential routing agreement are made or have been made in interstate commerce.

8. In the interest of clarification, plaintiff agrees to strike from its request for admissions filed on August 10, 1951, all references to a demand for an admission that the contracts referred to in paragraphs 1, 2, 3 and 6 contained the language purporting to have been copied from such contracts, and the defendants agree to withdraw their denials as to such matter, and in lieu of such request and such denials the parties agree that defendants, by supplemental response to plaintiff's request for admissions, will inform plaintiff as to which of the contracts specified in the appendices to such request contain a clause substantially in the form set forth in defendants' answer, within ten days after the signing of this stipulation.

9. Statistics incorporated in the Fifty-third Annual Report, 1949, of the Northern Pacific Railway Company are admissible as proof of the facts they purport to show; provided, however, that the party against whom such statistics are used may, upon seasonable notice to the other party, have corrected any errors in such statistics which such party is able to demonstrate.

10. It is agreed between the parties that execution of the stipulation entitled "Stipulation re shipments made by purchasers of timber and by lessees of various types, and related matters" shall operate as a withdrawal of the interrogatories filed August 10, 1951, except interrogatory number 3, and plaintiff will not propound any further interrogatories requesting revenue figures for any commodities which are or have been the subject of a preferential routing agreement, except the commodities referred to in said interrogatory number 3.

[fol. 116] Dated at Seattle, Washington, November 21st, 1952.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Counsel for Defendants.

Robert H. Weinstein, John J. Wilson, Elliott H. Feldman, Gerald F. McLaughlin, Counsel for Plaintiff.

[fol. 117] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

ORDER APPROVING STIPULATION—Filed November 22, 1952

This matter having come on to be heard before the undersigned Judge of the above entitled court upon application of the parties for approval of Stipulation Re Sources of Fact Information and Related Matters, dated November 19, 1952, and Stipulation Re Advance Notice as to Documentary Evidence, dated November 19, 1952, and the court having read said stipulations and finding that they are proper and the court having been fully advised in the premises:

Now, Therefore, It Is Hereby Ordered and decreed that the above named stipulations shall be and they hereby are approved, provided that the Court may require the production of any evidence at the trial on the merits notwithstanding any matter or thing to the contrary mentioned in said stipulations.

John C. Bowen, Judge

Presented by:

Harold G. Boggs, Of Counsel for defendants.

Approved as to form:

Robert H. Weinstein, Gerald F. McLaughlin, John J. Wilson, Elliott H. Feldman, Of Counsel for plaintiff.

[fol. 118] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

SUPPLEMENTAL RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS UNDER RULE 36—Filed January 8, 1953

Pursuant to Paragraph 8 of "Stipulation Re Sources of Fact, Information and Related Matters" defendants make this Supplemental Response to Plaintiff's Request for Admissions under Rule 36:

I.

With respect to Request I—Timber Land Sales:

All of the contracts listed on Exhibit A of the original response contain a preferential routing agreement in substantially the form set forth on page 10 of the answer to the complaint herein, except the following contracts, each of which contains a preferential routing agreement in the form designated by the number hereinbelow, each of such forms being copied in the appendix attached hereto and made a part hereof, commencing at page 1 and ending at page 36 of said appendix:

Cont. No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
FORM 6:					
9758	8-28-23	Wash.	White River Lbr. Co.	8,676	130,140,000
FORM 9					
10168	7- 1-36	"	T. A. Peterman	2,216	33,240,000
10260	2-27-39	"	"	1,198	31,140,000
10319	8-28-40	"	" (Cont. not executed)	480	7,200,000
10346	5-29-41	"	"	4,904	73,560,000
10464	8-30-43	"	"	28,333	21,600,000
[fol. 119] FORM 10					
9645	12-15-22	"	J. Neils Lbr. Co.	4,148	62,220,000
FORM 14					
10463	9-30-43	"	Lindberg & Hobi	840	12,600,000
10486	6- 6-44	"	W. H. Lindberg	2,547	38,105,000

Cont. No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
Form 19					
10579	3-29-45	Wash.	St. Paul & Tacoma Lbr. Co.	1,281	19,215,000
Form 21					
10281	10- 2-39	"	Cascade Tbr. Co.	2,236	100,000,000
Form 22					
10067	7- 1-33	"	McGoldrick Lbr. Co.	8,538	48,850,000
Form 23					
10154	2-29-36	"	Albert Miller	298	4,470,000
Form 24					
2089	5- 8-45	Idaho	Pack River Lbr. Co.	34,828	75,000,000
Form 29					
N-281	6- 5-30	Wash.	Klement & Kennedy	643	9,045,000
Form 35					
	1- 3'00	"	Weyerhaeuser Tbr. Co.	900,000	14,981,000,000
Form 36					
2472	7- 1-97	Mont.	Big Blackfoot Milling Co.	41,152	167,241,000
2732	6-14-98	"	" "	10,124	41,143,000
Form 37					
3881	8-31-01	"	" "	150,432	611,355,000
4023	3-31-02	"	" "	184,375	571,164,000
4535	6-30-03	"	" "	620,747	2,700,000,000
4734	6-30-04	"	" "	1,600	9,440,000
4932	9- 7-07	"	" "	11,927	53,017,500
5861	10-30-09	"	" "	5,689	17,797,000
Form 38					
10753	9-13-48	Wash.	St. Paul & Tacoma Lbr. Co.	295	228,000

[fol. 120] and except the following contracts which contain no preferential routing agreement:

Cont. No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
10468	10-25-43	Wash.	Clarence P. Wise	Not a timber land sale	
N-343	4-27-34	"	St. Paul & Tacoma Lbr. Co.	40	1,004,000

II.

With respect to Request II—Timber Sales:

All of the contracts listed on Exhibit B to the original response contain a preferential routing agreement in substantially the form set forth on page 10 of the answer to the complaint herein, except the following contracts, each of which contains a preferential routing agreement in the form designated by the number hereinbelow, each such form being copied in the appendix attached hereto, commencing at page 1 and ending at page 36 thereof:

T&M No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
Form 6					
609	12- 4-11	Wash.	Manley-Moore Lbr. Co.	1,920	28,800,000
638	9-14-12	"	" "	1,920	28,800,000
648	12-21-12	"	Ellensburg Lbr. Co.	320	4,800,000
690	12-29-13	"	Cascade Tbr. Co. (Should be Cascade Lbr. Co.)	1,120	16,800,000
693	12- 1-13	"	Manley-Moore Logging Co.	1,920	28,800,000
Form 9					
1710	6- 6-34	"	T. A. Peterman	645	1,300,000
1715	6- 8-34	"	Fairfax Lbr. Co.	3,690	55,350,000
(1715	10-29-34	"	Assigned to Eatonville Lbr. Co.	3,400	51,000,000)
Form 10					
1097	12-15-22	"	J. Neils Lbr. Co.	4,082	18,000,000
[fol. 121] **Form 11**					
3363	9- 1-48	Idaho	Idaho Pole Co. (contract never executed)	8,520	127,800,000
Form 13					
2088	1-25-43	Wash.	Soundview Pulp Co.	22,335	351,965,000
2211	8-11-45	"	" "	8,368	199,654,000
2218	9-17-45	"	" "	8,497	136,923,000
Form 14					
2122	8-30-43	"	Lindberg & Hobi	300	4,500,000
2146	6- 6-44	"	" "	2,548	38,220,000
Form 15					
2472	4-27-49	"	Cascade Lbr. Co.	13,620	204,300,000
Form 16					
1887	5-15-39	"	Joe Walsh & Cascade Lbr. Co.	320	4,800,000

(duplicated on sheets 3 & 6)

T&M No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
1969	3-24-41	Wash.	Joe Walsh & Cascade Lbr. Co.	320	4,800,000
1970	3-24-41	“	“ “	560	8,400,000
2003	11-28-41	“	“ “	100	1,500,000
Form 25					
585	6-12-11	“	August VonBanklin	640	9,600,000
Form 28					
1817	6- 1-37	“	U. S. Plywood Corp.	640	44,113,000
Form 30					
1343	6-22-27	“	Wm. Pierce	160	2,400,000
Form 31					
1026	4-28-21	“	W. G. McAvoy	80	1,346,300
Form 32					
753	3-16-15	“	Isaac Garrison	640	9,600,000
Form 33					
3	2-19-95	“	E. A. Stroup	160	9,800,000
Form 34					
1676	12-20-33	“	Kelso Veneer Co.	1,120	16,800,000
Form 39					
17	7-18-87	“	White River Shingle Co.	320	6,800,000

[fol. 122] and except the following contracts which contain no preferential routing agreement:

T&M No.	Date of Contract	State	Purchaser	Acres	Bd. Ft.
1321	3-10-27	Wash.	Pacific States Lbr. Co.	6,607	9,105,000
1728	11- 5-34	“	Cascade Lbr. Co.	302	2,987,000
2080	9-30-42	“	Lyman Lbr. Co.	2,080	60,759,000
2326	4- 4-47	“	Keene & Keene (Not a timber contract)	11,200	18,000,000
2392	12-24-47	“	B. John Furn. Corp.	115	3,916,000
1818	6- 1-37	“	U. S. Plywood Corp.	1,250	44,113,000
1979	6- 3-41	“	Soundview Pulp Co.	2,392	35,880,000
2095	3-16-43	“	Tacoma Eastern Lbr. Co.	640	9,600,000
21	4-18-87	“	Northwestern Lbr. Co.	640	6,000,000
23	9- 1-87	“	“ “	1,280	19,200,000
2180	10- 9-44	“	V. C. Monahan	320	4,800,000

There is a duplication in Request II in that T. & M. 1715, dated June 8, 1934, timber sale to Fairfax Lumber Company, listed on sheet 3 of Appendix B of the response, was assigned to Eatonville Lumber Company on October 29, 1934, and the contract is repeated on sheet 6 to the extent of 3400 acres and 51,000,000 board feet—original contract involved 3,690 acres and 55,350,000 board feet.

III.

With respect to Request III—Mineral Land Leases:

No form of preferential routing agreement is set-up in the answer to the complaint herein, but the leases listed on Exhibit C to the original response contain a preferential routing agreement in the form designated by letter opposite the description of the lease in the following list, each such form being copied in the appendix attached hereto, commencing at page 37 and ending at page 43 thereof.

[fol. 123]

T & M No.	Date of Lease	Lessee	Acreage	Routing Clause Form
WASH.				
12	11- 3-1894	Jeremiah O'Connor	160	"Q"
20	4- 1-1896	H. Middaugh	160	"H"
46	5- 4-1884	J. T. Mitchell	100	"I"
201	9-28-1897	Joseph McCabe	120	"R"
443	1-28-1905	Bell and Price	40	"M"
486	10-10-1897	Bell and Scott	40	"S"
526	6-11-1909	Montague J. Bond	320	"J"
778	4-15-1915	Lucien F. McConike, Jr.	640	"E"
795	3-27-1916	O. M. Sinclair	80	"E"
1029	3- 1-1921	Wilkeson Sandstone Quarry Co.	160	"M"
1307	6-17- 27	Alex Allardyce	(Oil & Gas permit)	
1133	8- 1-1923	The Arquetite Products Co.	80	"E"
1304	11- 1-1926	The Kittitas Diatomite Co.	80	"F"
1350	9-15-1927	The Manufacturers Mineral Co.	250	"E"
1369	9- 1-1926	H. A. Holland and C. A. Dawson	200	"A"
1567	1-27-1933	R. B. Kenyon	640	"E"

T & M No.	Date of Lease	Lessee	Acreage	Routing Clause Form
Wash. (Cont'd)				
1732	12-24-1934	Mrs. Shinzaburrow Sato & S. Ogato	80	"G"
2378	10- 7- 47	Columbia Basin Brick & Tile Co.	80	"T"
2271	6-18-1946	Homer E. Shepard & Robt. Lambert	120	"C"
2278	10- 1-1946	Manufacturers Mineral Co.	320	"D"
2412	3-11-1948	Manufacturers Mineral Co.	50	"N"
2431	7-12-1949	Ernest J. Peterson	1280	"O"
2473	4-28-1949	Mt. St. Helens Pumice Co.	400	"D"
2516	11- 3-1949	The Corliss-Kaiser Co.	80	"P"
Idaho				
734	8- 1-1914	P. F. McGovern & Martin J. Burns	160	"A"
1247	8- 1-1925	Paul Leuschel	120	"L"
1859	6-30-1938	Coeur d'Alene Extension Mines, Inc.	410	"E"
2100	2-11-1943	John A. Roos	4800	"C"
2399	1-30-1948	Silver Buckle Mining Co.	980	"D"
Mont.				
532	12-22-1908	Three Forks Portland Cement	1000	"K"
755	5-29-1914	Edward Horsky, et al.	640	"A"
830	5-12-1916	Frank C. Bailey	40	"L"
958	6- 2-1919	H. E. Joseph	350	"L"
1118	4-30-1921	Edward A. Morley	640	"A"
1211	12-15-1925	Thomas Myles	640	"A"
1434	8-27-1924	Phosphate Products Co.	560	"A"
1706	6- 1-1927	G. Henry Bennett	160	"B"
2109	3-17-1941	H. B. Reser	160	"D"
2421	4-30-1934	R. Giselius & F. W. McDonald	160	"B"
2704	2-20-1937	Carl H. Peterson	9996	"C"
2802	4- 1-1939	Anaconda Copper Mining Co.	640	"D"
2840	7- 1-1939	S. Standish	1280	"C"
2860	10- 2-1939	Joseph T. Farrow	40	"C"
2939-A	11- 6-1941	Lewis Clark	640	"C"
2984-A	12- 7-1942	Henry A. Schute	400	"C"

[fol. 124]

T & M No.	Date of Lease	Lessee	Acreage	Routing Clause Form
MONT. (Cont'd)				
2986	8- 3-1941	O. F. Martin	160	"D"
3023	3- 9-1942	Elmer Maddux	160	"D"
3030	4- 9-1942	Byron F. Croghan	160	"D"
3033	4-16-1942	Rupert Voreck	640	"D"
3038	5- 4-1942	Ernest Vetter	640	"C"
3045	7- 1-1942	L. F. Teutsch	700	"C"
3129	10-30-1943	Mrs. E. Tice Myers	160	"D"
3129-A	11- 1-1948	O. F. Martin	160	"D"
3180	10-23-1944	Martin Mining Co.	160	"D"
3184	11-25-1944	Thomas Myles, Jr.	160	"D"
3216-A	12-15-1945	Mike DiLulo	400	"C"
3241	3-10-1946	Manganese Products, Inc.	240	"D"
3283	9- 5-1946	W. D. Moon	1070	"C"
3296	1- 3-1947	Arthur S. Fee	160	"D"
3302	4- 5-1947	J. A. Denney	160	"D"
3328	3- 1-1948	Silica Products Co., Inc.	1920	"D"
3384	8- 1-1949	H. L. Poston	200	"D"
3399	10- 6-1949	Dan J. Grant & A. R. Johnson	160	"D"

IV.

With respect to Request VI—Coal Land Leases & Permits:

The various coal leases and permits listed in Appendix VI to the request contain a preferential routing agreement in the form designated by letter opposite the description of the lease in the following list, each such form being copied in the appendix attached hereto, commencing at page 44 and ending at page 45 thereof. (Form "D" is the form of preferential routing agreement set forth on page 9 of the answer:)

Northern Pacific Leases:

T & M No.	Date of Lease	Lessee	Routing Clause Form
MONTANA			
492	1- 1-1907	Montana Coal & Coke Co.	"B"
545	11-27-1909	Western Coal & Coke Co.	"B"
563	7- 1-1910	Julius Berg (Six Mile Coal Co.)	"A"

Northern Pacific (Cont'd)

T & M No.	Date of Lease	Lessee	Routing Clause Form
MONTANA (Cont'd)			
623	12- 1-1911	Ed. Horsky	"A"
6[illegible]3	6- 1-1913	Lee Rouse	"B"
714	2- 2-1914	Frank O'Meara	"A"
715	2- 2-1914	Washington Montana Coal Co.	"A"
757	6- 9-1914	Eureka Development Co.	"A"
765	11-15-1914	T. Nash, et al	"A"
743	4-17-1914	Roundup Coal Co. (no traffic clause)	
790	8-23-1915	Roundup Coal Co.	"A"
628	6- 1-1912	Oscar Nelson	"A"
[fol. 125]			
809	12-27-1915	Charles Augur	"H"
811	12- 1-1915	Iver Johnson	"G"
817	4- 7-1916	Ed. O'Donnell	"G"
1045	6- 1-1920	Bair Collins Co.	"A"
1079	12-28-1920	John C. Crocker	"A"
1271	9- 1-1923	Jeffries Coal Mining Co.	"A"
1442	11- 1-1923	C. D. Ray	"A"
1643	7- 1-1926	Northwestern Mining & Fuel Co.	"A"
1735	12- 1-1927	Bair Collins Co.	"A"
1819	9- 1-1928	Roundup Coal Mining Co.	"A"
2019	3- 1-1930	Superior Coal Co.	"A"
2957	3- 5-1941	R. D. Chamberlain	"C"
3102	5- 5-1943	Jeffries Coal Co.	"D"
3268	6-23-1926	Fred & Gus. Nies	"D"
699	12- 1-1913	John A. Murphy	"A"
717	1-26-1912	E. M. Barnett	"A"
770	12-29-1914	George A. Kers	"G"
889	9-20-1917	Edward H. Kinsey	"A"
901	2- 1-1918	A. A. Morris	"A"
943	12-19-1918	Wyoming Montana Coal Co.	"A"
989	9- 1-1919	Frank J. Stifel	"A"
1283	8- 1-1923	Charles B. Foncanon	"A"
NORTH DAKOTA			
5958	9- 1-1916	John F. Brodie	"A"
5988	4- 1-1923	Lehigh Mining Co.	"A"
5993	8- 1-1927	Lehigh Briquetting Co.	"B"

Northern Pacific (Cont'd)

T & M No.	Date of Lease	Lessee	Routing Clause Form
WASHINGTON			
2	10-17-1891	Wash. Mining & Dev. Co.	"A"
2	7- 1-1889	Washington Improvement Co.	"A"
2	1- 1-1889	John Kangley	"A"
2	6- 1-1893	Wilkeson Coal & Coke Co.	"A"
4	7- 1-1889	So. Prairie Coal Co.	"A"
6	6-20-1884	Tacoma Coal Co.	none
8	11-20-1891	Alton Coal Co.	"A"
9	7-20-1893	Green River Coal & Coke Co.	"A"
11	10- 2-1894	Eureka Coal Co.	"A"
63	1-26-1897	Eureka Coal Co.	"A"
385	1- 1-1901	Issaquah Coal Co. (NWI)	"A"
388	4- 1-1901	Cannel Coal Co.	"A"
465	3-12-1907	Pacific Coal & Oil	"A"
477	5- 1-1907	Fremont Coal Co. (NWI)	"A"
484	7- 5-1907	Independent Coal Co.	"A"
487	8- 1-1907	Coast Coal Co.	"A"
490	5-16-1907	North Coast Colliery Co.	"A"
508	9-11-1908	Sam Hyde	"A"
514	10-16-1908	Commonwealth Coal Co.	"A"
519	3- 6-1909	H. Thompson	"A"
521	3-30-1909	Geo. Bayne	"A"
525	5-20-1909	Sam Hyde	"A"
546	1- 3-1910	Fred Stevens	"A"
551	8- 8-1910	J. H. Rose	"A"
538	2- 2-1910	Central Coal Co. (NWI)	"A"
557	11- 2-1910	Tanum Coal Co.	"A"
515	10-16-1908	Black Carbon Coal Co.	"A"
[fol. 126]			
576	5-29-1911	U. S. Coal Co. (NWI-NP)	"A"
578	3-21-1911	J. S. McMiniemee	"A"
588	4-27-1911	W. Oakes (NWI)	"A"
602	6- 6-1911	Busy Bee Mining Co.	"A"
636	7- 1-1912	American Coal Co.	"A"
642	9- 1-1911	Deep Lake Coal Co. (NWI)	"A"
658	3-26-1913	James Anderson	None
674	8-20-1913	H. S. Matthews	"A"
686	12- 8-1913	Sam Hyde	"A"
738	9-29-1914	Pocahontas Coal & Coke Co.	"B"
746	1- 1-1915	National Coal Company	"C"
782	11-25-1915	Ind. Coal & Coke Co. (NWI)	"A"

Northern Pacific (Cont'd)

T & M No.	Date of Lease	Lessee	Routing Clause Form
WASHINGTON (Cont'd)			
805	7-22-1916	Joseph Swalwell	None
819	8-30-1916	Carbon Hill Coal Co.	“B”
874	11- 1-1917	J. E. Jones (NWI)	None
884	11- 1-1917	Wash. Colliery Co. (NWI)	“B”
902	5- 1-1918	Pacific *Coal* Coal Co.	“C”
909	5- 1-1918	Roslyn Fuel Co.	“C”
914	6-10-1918	Geo. Rankin	“B”
915	6-17-1918	Pacific Coast Coal Co.	“A”
919	9-18-1917	C. J. Smith	None
926	7-19-1918	C. J. Smith (NWI)	“B”
932	10-22-1918	T. M. Tannett	“B”
951	1919	Mashell Coal & Coke (NWI)	“A”
1002	8- 1-1920	C. J. Smith	“B”
1008	12-22- 20	Andrew Reynolds (NWI)	None
1023	1- 1-1921	T. W. Siddle	“A”
1025	1- 1- 21	Carbon Coal & Clay (NWI)	“C”
1042	1-27-1922	Dale Coal Co.	None
1053	1- 1-1921	Salton River Bituminous Coal Co.	“A”
1115	3-29-1923	John Richmond	None
1121	6- 1-1923	Am. Smelting & Refining (NWI)	None
1136	9- 1-1923	J. G. Parkin (NWI)	“A”
1165	4- 1-1924	C. B. Niblock (NWI)	“C”
1174	6-12-1924	Evan Jones	None
1222	4-23-1925	S. Mitsumasu	None
1260	9- 1-1925	Abe Morris (NWI)	“C”
1372	1-27-1928	Andrew Reynolds	“C”
1395	4- 1-1928	Dale Coal Co.	“C”
1400	7- 1-1928	Evan Collierie	“C”
1450	5-21-1929	James Bolde	“A”
1479	1- 1-1930	E. R. Peoples	“A”
1481	2- 1-1930	John Buesch	None
1505	7- 1-1930	J. O. West	“C”
1535	11- 3-1931	Morris Bros. Coal Mining Co.	“D”
1560	9- 7-1932	W. Kegler	“A”
1661	1- 1-1933	Geo. Savage	“C”
1697	3- 5-1934	Roslyn Cascade Coal Co.	“B”
1782-1	5- 1-1936	Dale Coal Co.	“C”
1790	9-15-1936	Thomas Bevan	None

Northern Pacific (Cont'd)

T & M No.	Date of Lease	Lessee	Routing Clause Form
WASHINGTON (Cont'd)			
1856	6- 4-1938	Palmer Coking Coal Co.	"C"
1991	9- -1941	Jonesville Coal Co.	"C"
2090	1- 1-1943	L. E. Thomas	"C"
[fol. 127]			
2216	10- 1-1945	Palmer Coking Coal Co.	"C"
2232	1-18-1946	J. B. Miller	"C"
2234	9-27-1945	Anderson Coal Mine	"C"
2309	1- 1-1947	G. C. Olson	"C"
2391	12-29-1947	John Lanigan	None
		Northwestern Improvement Company Leases:	
225	8-31-1907	Fleet Coal Co.	"A"
1920	1- 1-1940	Hyde Coal Co.	"C"
2085	12- 1-1942	Issaquah Coal Co.	"C"
2221	3- 1-1945	M. B. Cavanaugh	"C"

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

Duly sworn to by Harold G. Boggs (Jurat omitted in printing).

[fol. 129]

APPENDIX TO SUPPLEMENTAL RESPONSE

TIMBER AND TIMBER LAND SALES FORMS

Form 6

The purchaser agrees that it, its successors and assigns, will offer to the Northern Pacific Railway Company for transportation over its lines and will allow said Railway Company to transport all timber, lumber and lumber products manufactured from the timber cut from the lands herein described and from other lands owned or controlled by it, its successors and assigns, in the same district, provided the Northern Pacific Railway Company shall transport such timber, lumber and lumber products at as low rates as any competing railroad lines.

Form 9

As a part of the consideration for this contract, the purchaser agrees that all the products of his mills and factories shipped by rail to points reached by the vendor or its connecting lines, shall be offered to the Northern Pacific Railway Company for shipment, provided rates are equal to those of any other competing railway lines. Provided, however, that if the purchaser should purchase timber from other owners with an obligation to route the product thereof over another line, the purchaser shall not be required to ship via Northern Pacific Railway the product of the timber purchased with such obligation.

Form 10

Rates being equal, the purchaser agrees to offer to the Northern Pacific Railway Company, for transportation over its lines, all products manufactured from the timber cut and removed from lands herein described, or the equivalent, destined for points on the Northern Pacific Railway or its connecting lines, and rates being equal, will give the North-
[fol. 130] ern Pacific Railway Company the preference in the transportation over its lines of all freight from its manufacturing plants at Klickitat and Glenwood destined

for points on the Northern Pacific Railway or its connecting lines.

Form 11

The Operator agrees as one of the material considerations of this contract that, rates and service being equal, it will ship via Northern Pacific Railway all logs, poles, lumber and other forest products manufactured from the timber cut from the premises under this contract or from other timber which it may own or control standing or being in the drainages of Squaw or Swan or Moose Creeks, or an equivalent tonnage or quantity of poles, lumber and other forest products manufactured from timber cut from lands not purchased from the Railway Company located in other drainages. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured into such products. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, shipments thereof shall be routed to favor said Railway with the longest haul, if the expense to the Operator is not increased over the cost of shipment over another rail line. In the event the Operator shall sell or dispose of any logs, poles, lumber and other forest products manufactured from timber cut from the aforesaid drainages prior to the time the same are shipped, the Operator shall provide as a condition of such sale or disposal that the purchaser will comply with all of the provisions of this paragraph relative to the rail shipment.

The Operator shall permit the Railway Company to examine its records at any convenient time or place for the purpose of verifying performance under this provision.

[fol. 131]

Form 13

Agreement made this first day of October, A. D. 1942, between the Soundview Pulp Company, a Washington corporation, of Everett, Washington, party of the first part, and the Northern Pacific Railway Company, a Wisconsin corporation, party of the second part, Witnesseth:

Whereas, the first party has heretofore purchased from the second party certain timber and timbered lands and expects to purchase additional timber and timbered lands from the second party, a part consideration for which being the obligation of the first party to offer for transportation over the lines of the Northern Pacific Railway the manufactured products from said timber;

Now, Therefore, in consideration of one dollar ($1), and as part of the consideration for the timber and timbered lands the first party has heretofore acquired, or may hereafter purchase, from the second party, and for a valuable consideration moving from each party to the other, it is hereby mutually agreed as follows:

1. Obligation Prior to Logging

The first party agrees that rates being equal, until the commencement of the logging of timber and timbered lands which have been or may hereafter be purchased from the second party, it will ship over the lines of the Northern Pacific Railway, so as to give it the longest possible haul, one-third (1/3) of all its rail output from its plant or plants.

2. Obligation After Logging Is Commenced as to Pulp Species

From the date logging of the timber referred to in Paragraph 1 hereof is commenced, and as the logs are processed, rates being equal, the first party will ship over the lines of the Northern Pacific Railway, so as to give it the longest possible haul, one (1) ton of pulp for each eleven hundred (1100) feet, board measure, of the pulp species of said timber, or its equivalent in other manufactured products, [fol. 132] but in no event less than one-third (1/3) of all the rail output from its plant or plants. The first party will also ship over the lines of the Northern Pacific Railway, rates being equal, all logs from said timber from points of origin to points of processing, or to tidewater booming grounds.

3. Obligation as to Timber Acquired by Exchanges

The first party may elect to exchange portions of the timber or lands purchased from the second party with the State or the United States Government or other owners. It is agreed that the provisions of Paragraph 2 hereof shall apply to the timber received in such exchanges.

4. Obligation as to Timber Purchased From Others

It is agreed that the provisions of Paragraph 2 hereof shall apply to the timber removed by or for the first party which the first party may own or acquire in the same watershed as the timber which it has or which it may hereafter acquire from the second party, or which is adjacent to timber which is so acquired from the second party, or timber which may be removed in connection with logging the timber acquired from the second party.

5. Sale of Timber to Others

It is agreed that the first party may sell to others timber from lands or timber purchased from the second party or obtained by exchanges thereof, but the first party shall obtain an agreement from the purchaser or purchasers that the logs, and the manufactured products therefrom, (if manufactured into pulp, each 1100 feet, board measure, shall be deemed 1 ton), or the equivalent thereof, will move over the lines of the Northern Pacific Railway, rates being equal, so as to give it the longest possible haul. As [fol. 133] to the timber other than the pulp species, referred to in Paragraph 4 hereof, if sold to others, the first party agrees to use its best efforts to have the purchaser or purchasers ship such logs, and the products thereof, over the lines of the Northern Pacific Railway, rates being equal, so as to give it the longest possible haul.

6. First party will furnish to second party quarterly an itemized statement in detail, showing compliance with the provisions of this contract.

7. Each provision hereof shall be binding upon, and every benefit hereof shall inure to, the respective successors, assigns and subsidiaries of the parties.

Soundview Pulp Company, By ....

Witness: ....

Northern Pacific Railway Company, By ....

Attest: ....

[fol. 134] Form 14

Contract made this 16th day of April, 1940, between Northern Pacific Railway Company, a corporation of the State of Wisconsin, hereinafter called "Railway Company," and The Lindberg & Hobi Company, a Washington corporation, hereinafter called "Timber Company."

Whereas, the Railway Company has conveyed to the Timber Company certain lands situated in the Counties of Lewis and Thurston, State of Washington, which lands are listed and described on Schedule A hereto attached; and

Whereas, as one of the material considerations of such conveyance, it was understood that the Railway Company should receive for transportation over its lines all shipments of lumber and other products manufactured from the timber cut from the lands conveyed, destined to points on the railroad of the Railway Company or its connecting lines; and

Whereas, it is intended that if, for any reason, the Timber Company is unable to offer all of such shipments of lumber or other products manufactured from the timber upon the premises conveyed, for transportation over the lines of the Railway Company, it will, so far as possible, arrange for the transportation of an equivalent amount of shipments of lumber and other products manufactured from timber upon other lands owned and controlled by the Timber Company in the Little Nisqually area;

Now, Therefore, in order to carry out such understanding, and in consideration of such conveyance to it, of the lands described in Schedule A, the Timber Company agrees for itself, its successors and assigns, as follows:

(1) The Timber Company agrees that, rates being equal, it will, so far as it may be able to do so, ship via Northern Pacific Railway all lumber and other products manufactured by it from timber cut from the lands described in Schedule A and from lands owned or controlled by it in the Little Nisqually area; that it will offer to sell the logs and poles produced by it from said lands, at prices, terms and condi-

tions suitable to it, to the Wheeler Osgood Sales Corporation of Tacoma, Washington, or to such other lumber manu- [fol. 135] facturing company or companies as will agree in writing to ship via the Northern Pacific Railway, rates being equal, and to the extent that such purchaser shall be able to control the routing, the lumber and other products manufactured from said logs and poles, destined to points on the railroad of the Railway Company or its connecting lines. Such shipments by the Timber Company and by the purchasers to whom it may make sales of logs and poles, shall be made from time to time in the ordinary course of business, as the timber is manufactured. Where the point of destination of the lumber or other manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line.

(2) The Timber Company shall permit the Railway Company, at any convenient time or place, to examine the Timber Company's records of sales of logs made by it, and the shipments of lumber or other products manufactured by it from the timber cut from the lands covered by this agreement.

(3) In the event the Timber Company sells any portion of Sections 15, 17, 19, 21, 23, 25, 27, 29 and 31, Township 14 North, Range 4 East, and Sections 5, 7, 9, 11 and 15, Township 13 North, Range 4 East, described in Schedule A, or standing mature timber on any of said lands, it will provide as a condition of any such sale that the purchaser of such land or timber, and his successors or assigns, will ship via the Northern Pacific Railway, rates being equal, the lumber or other products manufactured from the timber cut from said lands, destined to points on the railroad of the Railway Company or its connecting lines.

In Witness Whereof the parties have caused this contract to be signed, in duplicate, this 16th day of April, 1940.

Northern Pacific Railway Company, By ....

The Lindberg & Hobi Company, By ....

[fol. 136]

Form 15

As one of the material considerations of this contract, without which it would not be made, the second party agrees that it will offer to the Northern Pacific Railway Company for transportation over its lines all shipments of logs and other unmanufactured forest products, consigned by rail to the mills owned or controlled, or that may be acquired, during the life of this contract, by the second party, provided rates are equal to those of competing rail lines.

The second party will also offer to the Northern Pacific Railway Company for transportation over its lines all of the manufactured products of the mills now owned or controlled, or that may be acquired, during the life of this contract, by the second party, whose operations are supplied in whole or in part by timber from the ownership of the first parties, which is shipped by rail destined to points reached by said railway or its connecting lines, provided rates are equal to those of competing rail lines. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to give said railway the longest haul, if the expense to the second party is not increased over the cost of shipment over another rail line.

Form 16

The second party agrees to cut and remove said yellow pine timber within one (1) year from the date hereof, and to ship the logs by Northern Pacific Railway from Cle Elum, Washington, consigned to the third party at Yakima, Washington.

[fol. 137]

Form 19

Agreement

Contract made this 17th day of May, A.D. 1945, between the St. Paul & Tacoma Lumber Company, of Tacoma, Washington, first party, herein called the Lumber Company, and the Northern Pacific Railway Company, second party, herein called the Railway Company, Witnesseth:

Whereas, the Railway Company has this date, by Deed No. 25014-W, sold and conveyed to the Lumber Company the following described lands in Pierce County, Washington, to-wit:

All of Section seventeen (17) and all fractional Section nineteen (19) in Township fifteen (15) North, Range seven (7) East of the Willamette Meridian; and

Whereas, one of the material considerations for said land is the agreement by the Lumber Company to ship via the Northern Pacific Railway all logs, poles and all products manufactured from the timber on said land;

Therefore, in consideration of the conveyance of said land to the Lumber Company and as one of the material considerations without which it would not have been made, the Lumber Company agrees for itself, its successors and assigns, as follows:

1. That it will ship, or cause to be shipped, via the Northern Pacific Railway all logs, poles and all products manufactured from the timber on said described land which is the subject of this agreement, or an equivalent of such products from other timber, which equivalent, however, shall not be satisfied out of the shipping commitments under other contracts with the Railway Company or the Northwestern Improvement Company; provided, this provision as to logs and poles shall only apply if there is transportation thereof as herein contemplated and the total cost of movement thereof by rail, including that part of the cost of the building of railroad by the Lumber Company which is fairly assignable to the transportation of logs and poles which are the subject of this agreement, does not exceed 50¢ per thousand board feet measure, the total cost of [fol. 138] other means of transportation. All shipments of such products or the equivalent shall be made at or within a reasonable time after the timber which is the subject of this agreement is manufactured. Where the point of destination is not on the line of the Northern Pacific Railway Company, such shipments shall be routed so as to give said Railway Company the longest haul possible, provided its rates are equal to those of competing rail lines.

2. The Lumber Company shall make monthly reports to the Western Land Agent of the Railway Company at Seattle, Washington, in a form furnished herewith, showing timber removed, if any, and sales, if any, of logs and poles cut from timber which is the subject of this agreement, and the Lumber Company shall permit the Railway Company to examine the Lumber Company's records at any convenient time and place for the purpose of verifying such reports or relative to the performance of this contract.

3. For the purpose of accounting under this contract, it is agreed (1) that the total shipments to be made hereunder shall not exceed the board foot measure as shown by the camp or woods scale of said timber; (2) for the purpose of equivalents, one ton of pulp shall equal 1100 feet log measure; for plywood, the standard conversion measure shall be used, namely, 2500 square feet of $3/8$ inch plywood shall equal 1000 board feet of log measure; for shingles, 12 squares shall equal 1000 board feet of log measure; and 1400 feet of cedar siding shall equal 1000 board feet of log measure.

4. In the event the Lumber Company shall sell any logs or poles cut from the timber which is the subject of this agreement, the Lumber Company shall secure from its vendee a written undertaking to perform all the obligations and to be bound by all the provisions of this section with respect to shipment of all logs or poles sold to such vendee and all products manufactured therefrom. Such undertaking in the case of sale of logs to a party who will manufacture the same without further transportation of such [fol. 139] logs shall be in the form of agreement marked "Exhibit A" attached hereto and made a part hereof. Upon receipt by the Railway Company of a fully executed copy of such undertaking, the Lumber Company shall be credited on its obligations under this section to the extent of the quantity of logs and poles so sold to such vendee. It is specifically understood and agreed, however, that if the Railway Company shall notify the Lumber Company in writing that any such vendee of the Lumber Company is in default of compliance with the terms of such undertaking, the Lumber Company shall forthwith discontinue

making any further sales to such vendee of logs or poles cut from timber which is the subject of this agreement until such time as the Railway Company shall notify the Lumber Company in writing that sales to such vendee may be resumed.

In Witness Whereof, the parties have caused this contract to be signed in duplicate the day and year first above written.

St. Paul & Tacoma Lumber Company, By: E. G. Griggs II, President.

Attest: P. L. Whitaker.

Northern Pacific Railway Company, By: B. W. Scandrett, Vice President.

Attest: Hugh McLeod, Assistant Secretary.

[fol. 140]

Exhibit A

Transportation Undertaking

Agreement made this .... day of ...., by and between ...., hereinafter called ...., and St. Paul & Tacoma Lumber Company, hereinafter called "Lumber Company."

I

Pursuant to the terms of agreement dated .... for the sale by the Lumber Company to .... of .... board feet log measure of logs and poles and as a material part of the consideration for said sale, ... agrees:

(1) To ship or cause to be shipped via the railroad of the Northern Pacific Railway Company all products manufactured from said logs and poles and to make all shipments of such products at or within a reasonable time after said logs and poles are manufactured. Where the point of destination is not on the line of the Northern Pacific Railway Company, such shipments shall be routed so as to give said Railway Company the longest haul possible, provided its rates are equal to those of competing rail lines.

(2) To make monthly reports to the Western Land Agent of said Railway Company at Seattle, Washington, in such form as he may from time to time prescribe, giving such information as in his judgment is necessary to enforce this agreement, and to permit the Railway Company to examine .... records at any convenient time and place for the purpose of verifying such reports, or relative to the performance of this contract.

II

It is mutually agreed that for the purpose of accounting under this contract (1) that the total shipments to be made hereunder shall not exceed .... board feet log measure of logs and timber; (2) for the purpose of equivalents one ton of pulp shall equal 1100 feet log measure; for plywood the standard conversion measure shall be used, namely: 2500 square feet of ⅜ inch plywood shall equal 1000 board feet of log measure; for shingles 12 squares shall equal 1000 board feet of log measure; for cedar siding 1400 feet shall equal 1000 board feet of log measure.

In Witness Whereof, the parties hereto have executed this agreement as of the date and year first above written.

By ....

St. Paul & Tacoma Lumber Company,

By ....

[fol. 141] Form 21

The purchaser agrees as one of the material considerations of this contract that rates being equal it will ship via the Northern Pacific Railway Company all logs, poles, timber and other products manufactured by it from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured by it from timber cut from lands not acquired from the vendor. Such shipments shall be made from time to time, in the ordinary course of business, as the timber is manufactured. Where the destination of the manufactured product is not on the line of the Northern Pacific Railway Company, such shipments shall be routed to favor said Railway Company with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the vendor of shipments under this provision, and shall permit the vendor to examine the purchaser's records at any convenient time or place for the purpose of verifying such reports.

The purchaser further agrees as one of the material considerations of this contract that it will offer to sell to the Northwest Door Company of Tacoma, Washington, a Washington corporation, all logs from the timber cut under this contract, suitable for its use, at the prevailing market price.

Form 22

The purchaser agrees as one of the material considerations of this contract that, rates being equal, it will ship via the Northern Pacific Railway all of the manufactured products from the timber sold under this contract and also from the timber cut from lands adjacent thereto and intermixed [fol. 142] therewith, it being the intention hereof that all shipments of the manufactured products from the logging operations on the Lower West Branch and Bear Paw Creeks shall be routed via the Northern Pacific Railway. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment by another line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine its records at any convenient time or place for the purpose of verifying such reports.

Form 23

The purchaser agrees as one of the material considerations of this contract that all logs, poles, lumber and other products manufactured from the timber on the land covered by this contract shall be sold and delivered to the Codd Lumber Company, of Spokane, Washington

[fol. 143] Form 24

(a) The purchaser agrees, as one of the material considerations of this contract, that it will ship or cause to be shipped via the Northern Pacific Railway all products manufactured from logs cut from the lands described in Paragraph 1 hereof and from other timber now or hereafter owned, controlled or acquired by it in the sale area, or from timber in other areas acquired in exchange for land or timber described in Paragraph 1 hereof. It is understood that the obligation to ship, set forth in the preceeding sentence, may be satisfied by equivalent quantities of manufactured products from timber cut from areas other than those described and not otherwise committed for shipment via the Northern Pacific Railway. All shipments of such products shall be made at or within a reasonable time after manufacture of the logs cut, whether from said lands or from said other timber. Where the point of destination is not on the line of the Northern Pacific Railway such shipments shall be routed so as to give said Railway Company the longest possible haul, provided its rates are equal to those of competing rail lines.

(b) The purchaser shall make monthly reports to the Western Land Agent of the Railway Company at Seattle, in a form furnished herewith, showing timber removed, if any, and sales made, if any, of logs and poles cut from timber which is the subject of this agreement, and the purchaser shall permit the Railway Company to examine the purchaser's records at any convenient time and place, for the purpose of verifying such reports, or relative to the performance of this contract.

(c) In the event the purchaser shall sell any of the logs cut from timber on said land referred to in Subdivision (a) of this paragraph, the purchaser shall secure from [fol. 144] its vendee a written undertaking in the form of agreement marked "Exhibit A", attached hereto and made a part hereof. Upon receipt by the Railway Company of a fully executed copy of such undertaking, the purchaser shall be credited on its shipping obligations under this agreement to the extent of the quantity of logs so sold to such vendee. It is specifically understood and agreed, however, that if the Railway Company shall notify the purchaser in writing that any such vendee of the purchaser is in default of compliance with the terms of such undertaking, the purchaser shall forthwith discontinue making any further sales to such vendee of any timber which is the subject of this contract, or logs cut therefrom, until such time as the Railway Company shall notify the purchaser in writing that such sales to such vendee may be resumed.

(d) It is hereby mutually agreed that the damages for breach of this paragraph by the purchaser are not susceptible of exact ascertainment or estimate, and it is therefore further mutually agreed that, in the event the purchaser shall fail in any respect to abide by the provisions of this paragraph, the Railway Company will have sustained damages in the sum of $2 per 1000 board feet of log measure on account of any and all timber, logs, lumber or other products as to which any provision of this paragraph has been breached.

Damages, as aforesaid, shall be allowed in any action brought by the Railway Company to recover damages for breach of this paragraph should the Railway Company elect, as it may elect, to bring such action. Notwithstanding the foregoing provision for liquidated damages, however, it is specifically understood and agreed that the Railway Company may, in the event of breach of this paragraph by the purchaser, elect to pursue any remedy it may be entitled to, and it is further understood and agreed that in the event the Railway Company shall elect [fol. 145] to cancel this contract on account of breach of any provision of this paragraph, the liquidated damage provision of Paragraph 9 shall govern in lieu of the liquidated damage provision of this paragraph.

(e) All provisions of this paragraph shall be and remain in full force and effect until the provisions thereof are fully performed, irrespective of whether or not the purchaser has otherwise performed this contract.

[fol. 146]

Exhibit A

Transportation Undertaking

Agreement made this .... day of ...., by and between .... hereinafter called ...., and the Pack River Lumber Company, hereinafter called "Lumber Company."

I

Pursuant to the terms of agreement dated .... for the sale by the Lumber Company to .... of .... board feet log measure of logs and as a material part of the consideration for said sale, ... agrees:

(1) To ship or cause to be shipped via the railroad of the Northern Pacific Railway Company all products manufactured from said logs, or an equivalent of such products from other timber, which equivalent, however, shall not be satisfied out of the shipping commitments under other contracts with the Railway Company or the Northwestern Improvement Company. Shipments of such products shall be made at or within a reasonable time after the manufacture of said logs. Where the point of destination is not on the line of Northern Pacific Railway Company, such shipments shall be routed so as to give said Railway Company the longest haul possible, provided its rates are equal to those of competing rail lines.

(2) To make monthly reports to the Western Land Agent of said Railway Company at Seattle in such form as he may from time to time prescribe, giving such information as in his judgment is necessary to enforce this agreement, and to permit said Railway Company to examine .... records at any convenient time and place for the purpose of verifying such reports, or relative to the performance of this contract.

[fol. 147]

II

In the event .... shall sell any of said logs, it shall secure from its vendee a written undertaking in the same form as this agreement. Upon receipt by said Railway Company of a fully executed copy of such undertaking, the .... shall be credited on its shipping obligations under this agreement to the extent of the quantity of such logs sold to such vendee.

III

This agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

IV

All provisions of this agreement shall be and remain in full force and effect until this agreement is fully performed, irrespective of whether or not the ....
has paid the Lumber Company in full for said logs.

In Witness Whereof, the parties hereto have executed this agreement on the day and year first above written.

By ....
Its

Pack River Lumber Company,

By ....
Its

[fol. 148] Form 25

The purchaser agrees as one of the material considerations of this contract that it will offer to the Northern Pacific Railway Company for transportation over the lines of said Company, and will allow said Company to transport, all shipments of logs, piles, ties or lumber manufactured from the timber herein agreed to be sold, and from lands in that vicinity to be hereafter acquired, destined for points reached by the Northern Pacific Railway, or its connecting lines, provided the Northern Pacific Railway Company will transport said logs, piles, ties or lumber at as low rates as any competing transportation line.

[fol. 149] Form 28

The purchaser expects to make plywood at its Seattle plant from such part of the timber on the above described lands as is suitable, and expects to sell the remainder in the form of logs. The purchaser agrees (railroad rates being equal) to offer to the Railway Company for transportation to points east of Montana, a quantity of manufactured product made at its Seattle mill equal to the quantity which could be made from said timber if all of it were suitable for and actually used in making plywood, on the basis of twenty-five hundred (2500) square feet, surface measurement, of three-eighths (⅜) inch thickness of plywood to one thousand (1,000) board feet, log scale. Said manufactured product shall be offered to the Railway Company for transportation in the ordinary course of operation of the purchaser's mill and in any event within ten (10) years from date hereof.

[fol. 150] Form 29

The purchasers agree as one of the material considerations of this contract, that all of the timber cut from said land shall be manufactured into lumber or shingles at the mills at Fortson and Hazel, on the Darrington Branch of the Northern Pacific Railway Company and that they will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and will allow said Company to transport all shipments of the manufactured products of the timber from the lands herein agreed to be sold, destined for points reached by the Northern Pacific Railway or its connecting lines.

The above clause amended and modified by Second Supplemental Agreement of May 1st, 1941 as follows:

The purchaser (second party hereto) agrees, as one of the considerations of the contract, that all of the timber cut from said land shall be manufactured into lumber or shingles at the mills at Fortson and Hazel on the Darrington Branch of the Northern Pacific Railway Company, and that he will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and will allow said

> Company to transport all shipments of the manufactured products of the timber from the lands to be sold, destined for points reached by the Northern Pacific Railway or its connecting lines. It is, however, understood and agreed that the purchaser may, if he so desires, ship and sell, on the [fol. 151] log market as logs, such of the fir and cedar timber as will grade No. 1, but, to the extent feasible, he will arrange such sales so that the manufactured product of the logs so sold will be offered to the Northern Pacific Railway Company for shipment as above provided.

[fol. 152] Form 30

All of such dead timber shall be cut into cordwood and shipped over the Northern Pacific Railway and report shall be made before the tenth day of each month to the Western Land Agent of the Improvement Company of all cord wood shipped from such dead timber during the preceding month, such report to be accompanied by the shipping receipts of the Northern Pacific agent at the point of shipment and by payment for the cord wood shipped at the rate of fifty cents (50¢) per cord.

[fol. 153] Form 31

All of the timber, or timber products, manufactured from the timber herein sold shall be offered to the Railway Company for transportation over its lines of railroad, and the purchaser agrees, as one of the material considerations of this contract, to cut at least one hundred car loads of fence posts from the cedar on said land and to ship the same over the lines of the Railway Company to Montana or to points east thereof.

[fol. 154] Form 32

All shipments of timber from said Section one (1) shall be made over the Northern Pacific Railway and the Purchaser will furnish to the Western Land Agent of the Railway Company a correct copy of the shipping bill for each car shipped, such bills to be furnished daily as shipments are made, so that the Railway Company shall have prompt and correct advice of all shipments made from said land. On or before the 20th day of each month a statement shall be rendered to the Western Land Agent of the Railway Company of the shipments made during the preceding calendar month, accompanied by payment for the timber cut at the rates above specified.

[fol. 155] Form 33

The saw timber cut upon the said quarter section shall be shipped over the Northern Pacific Railroad, and paid for at the rate of $1.50 per thousand feet, board measure, railroad scale, settlements to be made on or before the 15th day of each month for the months preceding, the amounts so paid to be credited and applied in payment of this contract until the full amount of three million feet shall have been so cut, shipped and paid for, and thereafter at the rate of 75 cents per thousand feet board measure, in the same manner aforesaid, until the full estimated amount of timber on said quarter section, which is hereby fixed and agreed upon as nine million, eight hundred thousand (9,800,000) feet, shall have been paid for, and in the event that said amount of timber shall not be found upon said quarter section, or shall not be cut and removed therefrom, then and in such case, any deficiency between the railroad scale and said estimate shall be made up in cash before any further cutting shall be allowed upon said section; that upon the full payment, as aforesaid for the timber upon said quarter section the party of the second part shall be granted a formal permit, in writing, to enter upon and cut the timber upon any other quarter section of said section, as may be agreed upon at the rate of 75 cents per thousand feet, subject to the same conditions as hereinbefore stated, the agreed estimates upon the several remaining quarter sections of said section being as follows, to-wit: The Northwest quarter Five million, six hundred and eighty thousand (5,680,000) feet, the Southwest quarter six million nine hundred and twenty thousand (6,920,000) feet, the Southeast quarter seven million, nine hundred and sixty thousand (7,960,000) feet. Provided that the said rate of 75 cents per thousand feet board measure to be paid on [fol. 156] all timber cut and shipped from, or estimated to be upon the said described land, shall be charged and collected only during the life of this agreement, and until the full amount of the consideration herein, the said sum of Twenty-two thousand, five hundred dollars ($22,500), with interest shall have been paid and credited.

[fol. 157] Form 34

It is understood and agreed that the manufactured product of the timber from said lands is to be shipped east by rail and all shipments shall be made over the Northern Pacific Railway to St. Paul and the Chicago, Burlington & Quincy Railway to Chicago.

[fol. 158] Form 35

And the said party of the second part further covenants to and with the said party of the first part, and its successors, that for a period of fifteen years from the date hereof, all lumber and other products manufactured from the timber cut from the premises above described, shipped by rail by said party of the second part, or his assigns in title to points reached by the line of the Northern Pacific Railway Company and its connections, shall be shipped via the said Northern Pacific Railway whenever the rates and facilities for such transportation offered by said Northern Pacific Railway Company shall be equal to those offered by other lines, and the performance of this covenant is hereby declared to be one of the considerations of this contract.

And it is mutually covenanted and agreed by and between the parties hereto that in the event of a breach of the last foregoing covenant, the said party of the second part shall pay to said party of the first part on account of such breach, the sum of two dollars ($2.00) per thousand feet board measure, for every thousand feet of lumber or other product manufactured from said timber, shipped by any railroad route or routes other than over the line of said Northern Pacific Railway.

And, Whereas, this purchase by the said party of the second part is made in contemplation of the organization by the said second party and certain persons associated with said second party of a corporation to be known as the "Weyerhaeuser Timber Company", and of the transfer to such corporation of the rights acquired by said second party by virtue of this contract, it is further agreed that in the event that said second party shall assign this contract or any rights acquired thereunder to such corporation so to be organized, or to any party, the said second party shall cause to be delivered to the first party hereto promissory notes in due form, as hereinbefore provided, whereby the deferred payments then due under this [fol. 159] contract of purchase shall be secured, and the said second party agrees to secure by endorsement on such notes, their payment to said party of the first part. And the said second party further agrees in the event of such assignment of this contract or of rights acquired hereunder, that such assignee shall execute and deliver a good and sufficient contract in writing, binding such assignee and all persons claiming under such assignee to ship the lumber and other products manufactured from the timber cut from the above described premises over the line of the Northern Pacific Railway in the same manner and to the same extent and with the same provisions for the payment of damages for a breach of such agreement as the said party of the second part is bound by this contract, and upon the execution of such contract by such assignee the party of the second part hereto shall be released from the personal obligation hereof to ship said lumber and said products over the line of the Northern Pacific Railway.

But it is expressly agreed that if the said party of the second part, or said corporation so to be organized, shall sell any of said lands to other parties, such lands so sold, to an amount not exceeding 250,000 acres, shall thereby and thereupon be released from the obligations hereof, as to the shipment of the produce cut from the same.

It is further agreed that in the event of a conveyance of the said premises to an assignee of said party of the second part such deed shall be free from conditions and that the obligation of such assignee to ship the said lumber and other products over the line of the Northern Pacific Railway shall be evidenced by the separate contract of such assignee.

[fol. 160] Form 36

Provided always, and these presents are upon this express condition, that all the merchantable timber standing, being or growing upon the lands hereinbefore described, which shall be cut therefrom by the said party of the second part, its successors or assigns, shall be manufactured into lumber at Bonner, Missoula county, in the state of Montana, and shall be delivered to the Northern Pacific Railway Company, its successors or assigns, for transportation over its lines of railway as now owned and operated, or hereafter to be owned or operated, to points of destination located upon the said lines; and whenever the point of destination of any such lumber is not situated upon any line of railway now owned or operated by the party of the first part, or which the said party of the first part shall hereafter own or operate, such lumber shall be carried over said lines of railway of said party of the first part, its successors and assigns, as far as practicable toward said point of destination; provided, however, that this condition shall not apply to such of said lumber so manufactured at Bonner as aforesaid, that may be necessary to supply the local demand for use in the immediate vicinity of said place of manufacture; provided, also, that the Northern Pacific Railway Company, its successors or assigns, shall not charge the party of the second part a higher rate than that regularly charged from the same point to the point of destination by any other railway company, and shall not charge a higher rate than that charged other shippers at the same point. And in the event of the breach of the said condition by the said party of the second part, its successors or assigns, the said party of the first part, or its successor, may enter upon the said premises for the condition broken and forfeit the right, title and interest of the party of the second part, its successors or assigns, therein and thereto, and may recover the said premises and all thereof.

[fol. 161] It is mutually covenanted and agreed by and between the parties hereto that in the event of a breach of the above condition, the said party of the first part, or its successor, may have the option, in lieu of entering upon the said lands for the breach of said condition, of demanding and receiving from the said party of the second part, its successors or assigns, the sum of one dollar and fifty cents ($1.50) per thousand feet, board measure, for every thousand feet, board measure, of timber cut from and taken from said lands and shipped either before or after the same is manufactured by any means or route other than by means of and over the railway aforesaid of the said party of the first part, or its successor. And the said party of the second part, for itself and for its successors and assigns, covenants and agrees that in the event of a breach of said condition, and in the event of the exercise of the said option upon the part of the said party of the first part or its successor, that it will pay to the said party of the first part, or its successor, the said sum of one dollar and fifty cents ($1.50) per thousand feet, board measure, for every thousand feet, board measure, of timber so cut and shipped as aforesaid; and it is further mutually agreed by and between the parties hereto that the said option hereinbefore last expressed shall be a continuing option of the party of the first part, and that the exercise by it, or by its successor, of the said option in the case of any breach of said condition, to collect the said one dollar and fifty cents ($1.50) per thousand feet, board measure, shall not preclude the party of the first part, or its successor, from entering for condition broken, in the event of any such breach of said condition which shall thereafter at any time or time occur.

[fol. 162] Form 37

Provided, always and these presents are upon the express condition that such of the timber upon the lands hereinbefore described as it is practicable to manufacture at some point or points on the main line of Grantor's railway, or its branch lines of railway in the State of Montana, shall be so manufactured and delivered to the said grantor, its successors or assigns, for transportation over its lines as now owned or operated, or hereafter to be owned or operated, to points of destination located upon said lines, and whenever the point of destination is not located upon said lines, such lumber shall be carried over said lines as far as practicable towards its point of destination; provided, also, that the grantor, its successors or assigns, shall not charge a higher rate than that regularly charged by other railway companies between the same points for similar service, or a higher rate than that charged other shippers between the same points.

Form 38

as a further material consideration for such sale, agrees that, rates being equal, it will ship via the Northern Pacific Railway all logs and other unmanufactured forest products and all lumber and other products manufactured from the timber cut from said premises, and all lumber and other products manufactured from timber removed from other lands so situated as to require hauling the timber cut therefrom over the road to be constructed by the Lumber Company across the lands above described. Such shipping commitment may, at the option of the Lumber Company, be fulfilled in whole or in part by shipping an equivalent quantity of lumber and other products manufactured from timber other than that hereinabove specified and not covered by any other contract now in effect with the Railway Company or the Northwestern Improvement Company. Such shipments shall be made from time to time in the ordinary course of business as the timber is [fol. 163] manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the Lumber Company is not increased over the cost of shipment over another rail line. The Lumber Company shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine its records at any convenient time or place for the purpose of verifying such reports.

[fol. 164]

Form 39

That from the trees so cut the party of the second part will take all the timber suitable for shingles; that they will manufacture said timber into shingles and ship the shingles over the Northern Pacific Railroad.

[fol. 165] MINERAL LAND LEASE

Forms:

"A"

The lessee will ship all ore mined from the premises over the line of the Northern Pacific Railway Company and its connections provided rates and facilities are as favorable as those of any competing line.

"B"

The lessee will offer to the lessor for transportation over its lines of railway, and allow the lessor to transport all calcite taken from the premises or any adjacent lands which the lessee may now or hereafter control, provided the lessor shall transport such calcite at as low a rate as any competing line.

"C"

The lessee will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and allow said Company to transport all granite removed from the premises provided the rates and services shall equal those of any competing line.

"D"

The lessee agrees for itself, its successors and assigns, as one of the material considerations of this contract, that rates and service being equal to those of any competing line, it will ship via the Northern Pacific Railway Com-[fol. 166] pany or its connections, all phosphate or phosphate rock mined and shipped from the premises; when the point of destination of the shipment is not on the line of the Northern Pacific Railway Company or its connections, such shipments shall be routed so as to give said Northern Pacific Railway Company the longest haul possible, provided rates and service shall be equal to those of any competing line.

"E"

The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of silica or products manufactured from the silica taken from the premises herein leased, or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said silica or manufactured products at as low rates as any competing transportation lines.

"F"

The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of silica or products manufactured from the silica taken from the premises herein leased, provided the lessor shall transport said silica or manufactured products at as low rates as any competing transportation line.

"G"

The lessee agrees that he will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of silica, silica sand and clay, or products manufactured therefrom, taken from the premises [fol. 167] herein leased, or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said silica, silica sand and clay, or manufactured products, at as low rates as any competing transportation line.

"H"

The said party of the second part further covenants and agrees that he will ship all stone quarried and taken out of said land, or any part thereof, or upon any adjoining land which he may now or hereafter own or control, exclusively over the line or lines of said railroad controlled or operated by the party of the first part, his successor or successors; *provided*, that the party of the first part shall give the party of the second part competitive rates for the transportation of said stone over his lines to all points reached by competing lines of transportation. The party of the second part shall perform, or cause to be performed, all work and labor, and shall bear all the expense of loading and unloading all cars used in the transportation of said stone.

"I"

The said party of the second part further covenants and agrees that he will ship all stone quarried and taken out of said land, or any part thereof, or on any adjoining land which he may now, or hereafter, own or control, exclusively over the line or lines of railroad controlled or operated by said party of the first part, his successor or successors; *provided,* that the party of the first part shall give the party of the second part competitive rates for the transportation of said stone over said lines to all points reached [fol. 168] by competing lines of transportation. The party of the second part shall perform, or cause to be performed, all work and labor, and shall bear all the expenses of loading and unloading all cars used in the transportation of said stone.

"J"

The Lessee agrees that he will offer to the Northern Pacific Railway for transportation over the lines of said Company to competitive points and will allow said Company to transport all shale, clay, brick, blocks and other articles manufactured from the shale and clay from the demised premises, or from any adjacent land which the Lessee may now or hereafter own or control, with the exception of any bricks, blocks and other articles manufactured which the Lessee may require for buildings, kilns, or other structures on property aforementioned; provided the Northern Pacific Railway Company shall transport such articles at rates corresponding with those charged by it for transportation of the same articles in this territory under like conditions.

"K"

The Cement Company will offer to the Railway Company for transportation all cement and cement products manufactured by it destined to points reached by the Railway Company's lines or by its lines and connections, provided it or it and its connections as the case may be offer as low rates as any competing railway or rail and water lines.

[fol. 169] "L"

All ores mined from the premises or adjacent premises controlled by the lessees shall be shipped over the line of the Northern Pacific Railway Company and its connections, provided rates and facilities are as favorable as those of any competing line.

"M"

The lessee agrees that it will offer to the Northern Pacific Railway Company for transportation over the lines of said Company, and will allow said Company to transport all stone taken from the demised premises, or from any adjacent lands which the lessee may now or hereafter own or control, provided the Northern Pacific Railway Company will transport said stone at as low rates as any competing transportation line or carrier.

"N"

The lessee agrees that it will offer to the lessor for transportation over its lines, and will allow the lessor to transport all shipments of marble, or products manufactured from the marble, taken from the premises herein leased, or other lands which the lessee may now or hereafter own or control, provided the lessor shall transport said marble, or manufactured products, at as low rates as any competing rail line. Where the point of destination of the product is not on the line of the lessor, such shipments shall be routed to favor the lessor with the longest haul, if the expense to the lessee is not increased over the cost of shipment over another rail line.

[fol. 170] "O"

All ores mined and concentrates and products taken from the premises destined for points reached by the Northern

Pacific Railway, or its connecting lines, shall be offered to the Northern Pacific Railway Company for shipment over its lines, provided rates and facilities are equal to those of any competing line.

"P"

The lessee covenants that it will ship or cause others to ship over the lines of the Northern Pacific Railway Company and its connections, provided the rates and service shall be equal to those of any competing line, all diatomaceous earth mined and shipped from the premises either in its crude state or that may be processed in its plant at Yakima, and all diatomaceous earth from adjacent lands, the rail shipment of which is controlled by the lessee or which can be prepared by the manufacturing processes established in said plant to meet the markets developed by the lessee.

Where the point of destination of the shipments herein provided for is not on the line of the Northern Pacific Railway Company or its connections, such shipments shall be routed so as to give said Northern Pacific Railway Company the longest haul possible, provided rates and service shall be equal to those of any competing line.

"Q"

That the stone so dug or quarried upon said tract of land shall be removed therefrom by shipment of the same upon cars over the line of said Northern Pacific Railroad Company which is now being operated by said parties of the first part; that the measurements of said stone so quarried and shipped shall be determined by the weight of the same as specified and shown upon the bills of lading of said Railroad Company for said stone so shipped.

[fol. 171] "R"

The party of the second part further covenants and agrees that he will ship all of the stone quarried or taken out of said land over the railroad controlled or operated by the party of the first part.

"S"

All shipments of stone or other freight to and from said quarry shall be made over the lines of the Northern Pacific Railway.

"T"

The lessee agrees that the products manufactured from all clay removed from the premises, as well as from all lands now or hereafter controlled by it, so far as such clay products are destined for rail shipments, as well as all incoming freight destined for use in the removal and treating of said clay, shall be shipped over the lines of the lessor, provided rates and services shall equal those of any competing lines.

[fol. 172]

COAL LAND LEASE FORMS

Form "A"

The lessee will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and allow said Company to transport all coal taken from the premises, or from any adjacent lands which the lessee may now or hereafter own or control, provided said Railway Company shall transport such coal at as low a rate as any competing line.

Form "B"

The lessee will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and allow said Company to transport all coal and all manufactures and by-products thereof taken from the premises, or from any adjacent lands which the lessee may now or hereafter own or control, provided said Railway Company shall transport such coal at as low a rate as any competing line.

Form "C"

The lessee will offer to the Northern Pacific Railway Company for transportation over the lines of said Company and allow said Company to transport all coal taken from the premises or from any adjacent lands which the lessee may now or hereafter own or control, except such coal hauled by wagon or truck for local use within a radius of ten miles from the mines or to points not touched by railroad, provided the said Company shall transport such coal at as low a rate as any competing line.

[fol. 173] Form "D"

The lessee covenants that all coal removed from the premises, as well as from adjacent lands now or hereafter controlled by him, as far as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided the rates and service shall equal those of any competing line.

[fol. 174] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

MOTION FOR SUMMARY JUDGMENT—Filed July 31, 1953

The United States of America, plaintiff, by its attorneys, acting pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves this Court for a summary judgment in favor of the United States on the ground that the records, papers and files in this action establish that there is no genuine issue as to any material fact, and that on the undisputed facts the United States is entitled as a matter of law to the judgment for which it moves herein.

Robert H. Weinstein, Gerald F. McLaughlin, Attorneys for Plaintiff.

Dated: July 31, 1953

[fol. 175] AFFIDAVIT OF SERVICE (omitted in printing).

[fol. 176] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

STIPULATION RE TAKING DEPOSITIONS OF VARIOUS WITNESSES—Filed July 6, 1954

It Is Hereby Stipulated by and between the parties to the above entitled action, through their respective attorneys, that the depositions of the persons named hereinbelow may be taken at the instance of defendants on oral interrogatories before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, the officer before whom each deposition is to be taken to put the witness on oath and, personally, or by someone acting under his direction and in his presence, to record the testimony of the witness and all objections made at the examination.

It Is Further Stipulated that the taking of said depositions shall commence on or about August 7, 1952, at Yakima, Washington, and that each witness shall be examined at the location under which his name appears or such other location as may be agreed upon, and that such depositions may be continued from day to day and from place to place until concluded. The exact time and place and the person before whom each such deposition is to be taken shall be agreed upon at a later date by the respective counsel for the parties.

It Is Further Stipulated that if for any reason the deposition of any person named below cannot be taken as scheduled, the deposition of some other person may be taken [fol. 177] in lieu thereof, and that the deposition of any person not named below may be taken to supplement any deposition with respect to any named industrial or grazing lessee. All such depositions shall be taken at such places as may be mutually agreeable to the parties and in the same manner with like effect as in the case of the persons named below.

It Is Further Stipulated that subject to consent given by the witness, the submission of any deposition to the witness, when fully transcribed, for examination and reading to or by him and opportunity to the witness to make any changes in the form or substance of said deposition or to sign the same are hereby expressly waived.

It Is Further Stipulated that, except as otherwise provided in this stipulation, said depositions shall in all respects be governed by Rules 26, 31 and 32 of the Rules of Civil Procedure for the District Courts of the United States.

It Is Further Stipulated that the named persons referred to above and the locations at which it is tentatively proposed their respective depositions shall be taken are as follows:

Ellensburg, Wash.

Robert Rutter

Yakima, Wash.

M. L. Bozelle	Inland Pipe and Supply Co.
Ralph E. Strand	Strand Fruit & Storage
Winston E. Brady	Yakima Fruit Growers Assn.
Walter Kohagen	Yakima County Horticultural Union
Virgil O. McWhorter	Lessee of grazing land
[fol. 178] Alex Dunnitt	" " " "
Armand D. Olson	" " " "
Russell Brown	" " " "

Walla Walla, Wash.

L. D. Felch	Mojonnier & Sons
William Berney	Walla Walla Produce Co.

Spokane, Wash.

C. E. Fox	Armour & Co.
C. W. Johnson	Roundup Grocery Co.
H. C. Gemberling	Gemberling Grain Co.
G. A. Anderson	Rosalia Produce Co.
E. H. Braden	Spokane Paper & Stationery Co.
Derwin F. Lang	Lessee of grazing land

Missoula, Mont.

Wm. G. Tremper	East Side Service Co.
O. C. Garlington	Missoula Mercantile Co.
Wm. Steinbrunner, Jr.	Missoula Brewing Co.
Howard Raser	Missoula Livestock Auction Co.

Deer Lodge, Missoula, Butte, or Helena, Mont.

Peter Pauly	Lessee of grazing land.

Butte, Mont.

Roy E. Murray	Murray Motor Corp.

[fol. 179] *Helena, Mont.*

C. M. Wall	Power-Townsend Co.
Willard T. Anderson	Eddies Bakeries
Frank Carey	Lessee of grazing land
Ralph Miracle	Montana Livestock Commission
E. A. Phillips	Secretary, Montana Stockgrowers Assn.
Everett E. Shuey	Secretary, Montana Woolgrowers Assn.

Billings, Mont.

George R. Kinsman	Billings Hardware Co.
Everett M. Baker	Baker Transfer & Cold Storage Co.
M. J. Delmore	Northern Pacific Railway Co.
Wm. Magelsen	Lessee of grazing land

Miles City, Mont.

Wm. P. Lakin	Lakin Seed Co.
Kenneth M. Brown	Midland Coal & Lbr. Co.
J. R. Kelley	Yellowstone Distributing Co.
George Davidson	Lessee of grazing land
M. C. Simpson	" " " "
Susan Haughian	" " " "
A. W. Bradshaw	" " " "
C. A. Mallett	" " " "
Geo. M. Williamson	" " " "
W. R. Woodson	" " " "
Wallace Ulmer	" " " "
W. E. Husband	Northern Pacific Railway Co.
Henry Berg	" " " "

[fol. 180] *Jamestown, N. D.*

Oscar A. Amundson	Bridgeman Russell Co.
John Olson	C. H. Carpenter Lbr. Co.
Palmer R. Nelson	Jamestown Grocery Co.
Robert Eddy	Eddy Furniture Co.
E. T. Bleecker	Northern Pacific Railway Co.

Fargo, N. D.

T. Klugman	Interstate Seed & Grain Co.
E. E. Simonsen	Fargo Foundry Co.
Carl Ekern	" " "
Oscar H. Kjorlie	Oscar H. Kjorlie Co.
A. C. McKean	Northern Pacific Railway Co.

Grand Forks, N. D.

L. A. Brown	Agsco Chemicals, Inc.
Ed A. Bostrom	Grand Forks Coca Cola Bottling Co.
Earl Isaacson	Simonson Cash Supply Co.
E. R. Broderick	Northern Pacific Railway Co.

Bemidji, Minn.

Roy Lundmark	Dickinson Lbr. Co.
H. A. Krebs	H. A. Krebs Co.
R. L. Giles	Bulk Oil Storage
G. T. Flynn	Northern Pacific Railway Co.

St. Cloud, Minn.	
H. W. Landwehr	Landwehr Transfer & Storage, Inc.
Thomas A. Donlin	Donlin Co., Inc.
[fol. 181] *Wadena, Minn.*	
J. F. Peterson	Peterson-Biddick Corp.
Detroit Lakes, Minn.	
W. E. Reid	Lumber and farm implements
Mr. Taylor	Wilcox Lbr. Co.
St. Paul, Minn.	
J. G. Woodworth	Retired Vice President Traffic, Northern Pacific Railway Co.

This stipulation shall be effective as of August 5, 1952.

Dated at Seattle, Washington, this 6th day of July, 1954.

Edward M. Feeney, Attorney for Plaintiff.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

[fol. 182] [File endorsement omitted]

In the United States District Court, Western District of Washington, Northern Division

[Title omitted]

Affidavit of R. G. Lindgren—Filed October 1, 1954

State of Washington,
County of King, ss.:

R. G. Lindgren, being first duly sworn, on oath deposes and says:

That he is and has for over 40 years been a civil engineer, that he has been employed by the Northern Pacific Railway Company in engineering and other capacities continuously since February 1924; that since May, 1931 he has been employed in the Land Department of said Railway Company as Field Engineer and in such capacity has made various studies of the resources embraced in the land grants to said Company, including timber; that in connection with the preparation for trial of the above case, he made a study of the United States Forest Service records at Missoula, Montana and Portland, Oregon with a view to determining the relationship between the estimated volume of timber owned by said Railway Company and Northwestern Improvement Company to the total estimated volume of timber in all ownerships.

[fol. 183] That Missoula, Montana is the headquarters for Region 1 of the United States Forest Service with jurisdiction over National Forests in Montana, Northern Idaho and Northeastern Washington; that Portland, Oregon is the headquarters for Region 6 of said Forest Service with jurisdiction over National Forests in all of Washington, except the portion in Region 1.

That he is familiar with the survey of timber resources in said States made by the Forest Service pursuant to the McSweeney-McNary Forest Research Act of 1928 as amended (45 Stats. p. 702), one of the purposes of which was to obtain a nationwide inventory of merchantable timber; that said inventory was obtained in Regions 1 and 6 between the years 1935 to 1942 by requesting all private owners of timber to submit to the Forest Service their estimates of timber volumes of various species owned by them in the respective States, by requesting like estimates of timber volumes owned by States and municipal subdivisions and by making an estimate of timber volumes of various species in the various National Forests, owned by the United States; that the various estimates were adjusted by the Forest Service to place them as nearly as possible on a uniform basis; that Northern Pacific Railway Company and Northwestern Improvement Company in connection with said inventory reported to the Forest Service their estimates of the volume of timber owned by them in said States; that your affiant examined the original records of such inventory and from them has determined and would testify, if called as a witness in the trial of the above case, that the estimated volume of timber in all [fol. 184] ownerships and in the Northern Pacific Railway Company and Northwestern Improvement Company in such States as shown by said inventory in both Regions 1 and 6 is as follows:

N. P. Ry and NW. I. Co.

	All Ownerships Vol, M. Bd. Ft.	Vol. M. Bd. Ft.	Percent of All Ownerships
STATES:			
Montana	43,929,590	2,627,002	5.98
Idaho	37,207,973	2,148,253	5.77
Washington	243,797,385	10,944,390	4.49
	324,934,948	15,719,645	4.84

R. G. Lindgren

Subscribed and sworn to before me this 29th day of September, 1954.

M. P. Nadeau, Notary Public in and for the State of Washington, residing at Seattle.

Receipt Acknowledged, October 1, 1954, Edward M. Feeney, Atty., U. S. Dept. of Justice.

[fol. 185] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

STIPULATION AS TO USE OF COPIES IN LIEU OF ORIGINAL DOCUMENTS; AS TO CERTAIN INFORMATION IN CONNECTION WITH INDUSTRIAL LEASES AND GRAZING LEASES—Filed July 6, 1954

It Is Hereby Stipulated by and between the parties to the above entitled action, through their respective attorneys, as follows:

1. That either party may offer and there shall be received in evidence a copy of any record, correspondence or any other document, with the same force and effect as if the original thereof had been offered in evidence, subject, however, to the right of either party within a reasonable time to demand and receive the production of the original of any such document for the purpose of comparison and correction of the copy to conform to the original where errors are found.

2. (a) That if an officer of the Industrial Development Department of defendant Railway Company were called by defendants he would testify as follows at the trial of this cause:

> That he is in charge of the records from which the data shown on Exhibit A, consisting of four sheets, [fol. 186] attached hereto and made a part hereof, was obtained; that all such data is shown on such records of the leases listed on such exhibit; that the leases listed on such exhibit and the data there shown with respect to each are the leases and data relating to the leases made to the lessees of industry sites named in the stipulation between the parties hereto, dated August 5, 1952, re taking depositions of various witnesses;

(b) That if an officer of the Land Department of defendant Railway Company were called by defendants he would testify as follows at the trial of this cause:

> That he is in charge of the records from which the data shown on Exhibit B, consisting of Sheets 1 to 30, inclusive, and Exhibit C, consisting of one sheet, attached hereto and made a part hereof, was obtained; that all such data is shown on such records of the leases listed on such exhibit; that the leases listed on such exhibit and the data there shown with respect thereto are the leases and data relating to the leases made to the lessees of grazing lands named in said stipulation;

(c) That the data shown on said Exhibits A, B and C be deemed proven facts, subject, however, to correction by any party of any error in such data.

[fol. 187] This stipulation shall be effective as of August 7, 1952, and is the stipulation referred to in the depositions taken pursuant to the stipulation of August 5, 1952.

Dated at Seattle, Washington, July 6, 1954.

Edward M. Feeney, Attorney for Plaintiff.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

EXHIBIT "A" TO STIPULATION

INDUSTRIAL LEASES

PRECEDING LEASES WITH PRESENT LESSEE

No.	Industry	Location	Dat.	Term	No.	Date	Term	No.	Date	Term	No	Date	Term	No.	Date	1 m
55208	Interstate Seed & Grain Co.	Fargo, N.D.	2-1-37	20 yrs												
54129	Fargo Foundry Co.	"	3-1-36	35 "	43180	2-1-26	15 yrs	39990	4-1-23	Indef	(15728	9-1-05	Indef			
											(20912	4-1-08	15 yrs			
63783	Oscar H. Kjorlie Co.	"	7-16-44	Indef	51662	9-16-33	Indef									
67195	Agsco Chemicals, Inc.	Grand Forks N.D.	4-2-47	"												
54318	Grand Forks Coca Cola Bottling Co., Inc.	"	9-15-36	20 yrs												
50774	Simonson Cash Supply Co.	"	10-1-32	Indef												
60042	"	"	7-1-41	"	59434	4-25-41	2 mos									
67077	Eddy Furniture Co.	Jamestown, N. D.	2-1-47	"												
34145	Bridgeman-Russell Co.	"	1-15-19	"												
66116	C. H. Carpenter Lbr. Co.	"	6-14-46	"												
68185	Jamestown Grocery Co.	"	9-15-47	20 yrs	37463	9-15-27	20 yrs									
63536	Lakin Seed Co. (Partnership)	Miles City, Mont.	10-1-44	"	53033	10-1-34	10 yrs	41869	10-1-24	10 yrs	38117	10-1-21	3 yrs	20740	10-1-08	Indef
31215	Midland Coal & Lumber Co.	"	2-1-17	Indef												
45199	"	"	11-1-27	"												
59264	"	Glendive, Mont.	11-16-40	25 yrs	(23735	3-1-11	Indef	12659	9-1-03	Indef	12098	5-15-03				
					(58501	3-16-40	"	31318	3-1-17	"						
73547	Yellowstone Distributing Co.	Miles City Mont.	4-1-51	Indef										(20675	3-1-09	25 yrs
											(30386	7-1-16	25 yrs	(26138	1-1-13	Indef
64059	Billings Hardware Co.	Billings, Mont	1-1-45	25 yrs	48369	7-1-31	25 yrs	34945	7-1-19	25 yrs	(31040	1-1-17	25 "			
71762	Baker Transfer & Storage Co.	"	5-1-50	20 yrs	(27585	5-1-14	Indef									
					(27923	8-1-14	"									
					(52655	8-1-34	20 yrs	27922	8-1-14	20 yrs						
					(59368	1-1-42	Indef									
					(63384	12-1-43	"									
59426	Murray Motor Corp.	Butte, Mont	6-16-41	15 yrs												
17890	T. C. Power Co.	Helena, M.	10-1-06	Indef												
58957	Armour & Co.	Spokane, Wn	6-1-41	15 yrs	30189	6-1-16	25 yrs	Assigned to Armour & Co.				12-22-17				
68093	The Jefferson Company	"	2-1-48	15 "	62840	8-15-44	Indef									
70802	Roundup Grocery Co.	"	4-1-50	15 "												
64987	Gemberling Grain Co.	Tokio, Wn.	10-1-45	Indef												
56369	H. C. Gemberling, dba Grain Elevator Sites	Cunninghem Wash.	6-16-38	"												
60785	Rosalia Produce, Inc.	Rosalia, Wn.	8-15-42	"												
58246	" (Grain Elev.)	Plaza, Wn	6-1-40	"												
58247	" (Grain Whse.)	" "	6-1-40	"												
58248	" "	" "	6-1-40	"												
65847	" (Coal Shed)	" "	8-1-46	"												
65863	" (Grain Elev.)	" "	8-1-46	"												
65864	" (Grain Whse.)	" "	8-1-46	"												
58990	"	McCoy, Wn.	5-1-41	10 yrs	(55355	5-1-37	Indef									
					(53714	8-1-35	"									
					(40067	8-1-29	"									
					(58936	1-1-47	"									
59610	" (Not Bulk)	Donahue, Wn.	5-1-41	"	(47068	8-1-29	"									
					(56802	5-1-39	"									
46550	Inland Pipe & Supply Co.	Yakima, "	1-1-29	25 yrs												
68148	"	" "	7-1-48	" "												
73233	A. D. & R. E. Strand dba Strand Fruit & Storage	Cowiche, Wn.	7-15-51	25 "	(57139	4-5-39	"									
					(43744	7-15-26	25 yrs									

	INDUSTRIAL LEASES				PRECEDING LEASES WITH PRESENT LESSEE									
	Industry	Location	Date	Term	No.	Date	Term	No.	Date	Term	No.	Date	Term	
	YAKIMA FRUIT GROWERS ASS'N													
45900	Building site	Weikel, Wash.	7-1-28	50 yrs	43903	9-1-28	10 yrs							
44959	Subway between buildings	"	8-5-27											
44425	Oil tank storage site	Gleed, Wash.	3-15-27	Indef										
58013	Encroachment, part of bldg.	Sawyer, Wash.	11-10-39	"										
44731	Sewer pipe crossing	" "	6-1-27	"										
44143	Water Pipe Line	Zillah, "	12-4-26	"										
50776	Light pole	Selah, "	10-1-32	"										
73168	Building site	Wapato, "	2-15-51	21 yrs	47801	2-15-30	21 yrs	(43258	2-15-26	25 yrs				
								(37600	6-1-21	10 "	30228	6-1-16	Indef	Assigned to Yakima Fruit Growers Ass'n 5-8-18
42736	Drain pipe	" "	8-15-25	Indef										
48005	Building site	Prosser,"	5-15-50	25 yrs										
36374	Fruit warehouse site	Kennewick, Wn.	3-1-22	50 "										
60808	Fruit warehouse site	" "	8-1-42	25 "	32295	8-1-17	25 yrs	Assigned to Yakima Fruit Growers Ass'n. 9-29-19						
	YAKIMA COUNTY HORTICULTURAL UNION													
58897	Protection	Tieton, Wash.	1-41	Indef										
55470	Loading platform	" "	6-1-37	10 yrs ex.										
52863	Box storage	" "	11-1-34	Indef										
45593	Building site	Weikel, "	4-2-28	10 yrs Ex.20 yrs										
64328	Box storage	Naches, "	6-1-45	Indef										
65624	Loading platform	Gleed, "	5-1-46	"	43422	5-1-28	10 yrs							
45878	Platform	Wapato, "	7-15-28	"	29192	7-15-15	Indef							
72472	Parking lot	Yakima, "	10-1-50	"										
65841	" "	" "	8-15-46	"	Cancelled 6-19-49									
41736	Building site	" "	1-1-25	50 yrs	38257	1-1-22	3 yrs							
41110	" "	" "	4-15-24	50 yrs	30050	4-15-16	10 yrs							
64248	Mojonnier & Sons	Sunnyside,"	5-1-45	25 yrs										
50923	" "	Walla Walla, Wash.	Eff. 1-15-33) 11-16-32)	20 yrs										
58186	Pasco Growers Assn.	Kennewick, Wn.	6-1-40	20 yrs 8mo										
	Sublet to Baker Produce Co		4-1-51	10 yrs										
65142	Walla Walla Produce Co.	Walla Walla, Wn.	3-1-46	25 yrs	61851	4-1-43	Indef							
65057	Eddy's Bakery	Yakima, Wash.	1-1-46	25 yrs	(47690	2-15-30	24 yrs	Assigned to Eddy's Bakery 5-3-40						
					(46567	2-15-29	25 yrs	Assigned to Eddy's Bakery 5-3-40						
41664	Peterson Biddick Corp.	Jamestown, N.D.	8-15-24	Indef										
65428	Peterson Biddick Corp.	Wadena, Minn.	2-1-46	20 yrs	29873	2-1-13	30 yrs	29627	10-1-15	Indef				
60469	Dickinson Lbr. Co.	Bemidji, Minn.	10-1-42	Indef	M&I 1178	10-1-40	Indef							
64883	H. A. Krebs Co.	" "	10-1-45	"										
71026	W. E. Reid	Detroit Lakes, Minn.	8-1-49	"	62495	2-1-44	Indef	53349	5-1-35	Indef				
71349	Wilcox Lbr. Co. Corp.	" "	11-1-49	15 yrs										
67559	Landwehr Transfer & Storage, Inc.	St.Cloud, Minn.	4-16-47	10 "										
65477	The Donlin Co., Inc.	" "	1-1-46	10 yrs	(45133	10-15-27	20 yrs	44108	11-15-26	"				
					(45343	12-15-27	(9 yrs (10 mo.							
					(54944	12-16-36	Indef							
53098	East Side Service Co.	Missoula, Mont.	2-1-35	Indef	39944	3-1-25	Indef	Assigned to East Side Service Co. 10-22-34						
53466	Missoula Mercantile Co.	" "	6-1-35	25 yrs	26827	6-1-10	25 yrs							
64082	Sicks' Missoula Brewing Co.	" "	2-1-45	Indef	42588	7-1-25	Indef	Assigned to Missoula Brewing Co. 7-1-33						
66694	Missoula Live Stock Auction Co.	" "	8-16-46	"	59991	8-16-41	5 yrs	Assigned to Missoula Livestock Auction Co. 7-14-45						

[fol. 190]

EXHIBIT "B" TO STIPULATION

Grazing Leases Issued to Sylvan and Peter Pauly

Year	Acres
1926	5,142.75
1927	5,142.75
1928	8,249.96
1929	8,728.86
1930	8,728.86
1931	8,728.86
1932	10,008.86
1933	10,008.86
1934	10,008.86
1935	10,008.86
1936	11,870.50
1937	11,870.50
1938	10,662.06
1939	10,662.06
1940	15,144.00
1941	14,504.00
1942	14,504.00
1943	14,504.00
1944	9,429.70
1945	9,429.70
1946	9,429.70
1947	1,933.20
1948	1,933.20
1949	1,933.20
1950	1,933.20
1951	1,933.20

GRAZING LEASES ISSUED TO SYLVAN AND PETER PAULY, DEER LODGE, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. W	Acres	County	Remarks
L-815	Nov. 22, 1907	Peter Pauly	W½	29	10	6	320.00	Powell	Cancelled Sept. 1910 account default in rental.
			All	31	"	"	640.08	"	
L-842	Jan. 31, 1908	Peter Pauly	SW¼	33	9	9	160.00	Powell	Cancelled Sept. 1912 account sale to lessee.
L-1032	Oct. 16, 1908	Peter Pauly	W½	7	10	6	321.20	Powell	Transferred to Lease No. 1662.
L-1662	Feb. 24, 1911	Peter Pauly	All	7	10	6	641.20	Powell	Cancelled April 10, 1928 - included in subsequent leases.
			All	17	"	"	640.00	"	
			All	19	9	7	640.04	"	
			All	31	11	6	621.79	Lewis & Clark	Cancelled Feb. 11, 1914 account sale to other party.
			N½	1	10	7	313.36	Powell	
			Lots 3,4, SW¼SE¼	13	10	7	114.70	Powell	Cancelled April 19, 1913 account sale to other party.
L-3076	May 9, 1917	Peter Pauly	All	21	9	7	640.00	Powell	Cancelled April 10, 1928 - included in subsequent lease.
L-4985	Aug. 27, 1925	Peter Pauly	E½, SW¼	29	9	7	478.90	Powell	Cancelled April 10, 1928 - included in subsequent lease.
L-5277	May 3, 1926	Peter Pauly	All	9	9	7	640.00	Powell	Cancelled April 10, 1928 - included in subsequent lease.
			Lot 2, E½, NW¼, N½SW¼	11	"	"	592.36	"	
			All	15	"	"	640.00	"	
			All	17	"	"	633.72	"	
			N½, SW¼, W½SE¼	25	"	"	560.00	"	
			All	27	"	"	640.00	"	
			NW¼	29	"	"	158.30	"	
			All	33	"	"	640.00	"	
			All	35	"	"	638.37	"	
L-5864	March 1, 1928	Peter Pauly	All	7	10	6	641.20	Powell	Cancelled May 3, 1946 account sale to lessee.
		Assgd. 3/12/38 to	All	17	"	"	640.00	"	
		Williams & Pauly	All	19	9	7	640.04	"	
			All	21	"	"	640.00	"	
			W½W½	27	"	"	160.00	"	
			All	29	"	"	637.20	"	
			All	33	"	"	640.00	"	
			All	35	"	"	638.37	"	
			All	9	9	7	640.00	"	Cancelled June 1940 account sale to other party.
			Lot 2, E½, NW¼, N½SW¼	11	9	7	592.36	"	Cancelled Dec. 27, 1943 account sale to other party.
			All	15	9	7	640.00	"	Cancelled May 3, 1946 account sale to U.S.
			All	17	"	"	633.72	"	
			Lots 2,3,4,5, S½NW¼, S½	23	"	"	545.97	"	
			N½, SW¼, W½SE¼	25	"	"	560.00	"	
			E½, E½W½	27	"	"	480.00	"	
L-7300	June 13, 1932	Peter Pauly	E½	23	11	10	320.00	Powell	Pending.
		Assgd. 6/16/45 to	All	25	"	"	640.00	"	
		Williams & Pauly	NE¼NE¼, S½NE¼, SE¼SW¼, SE¼	35	"	"	320.00	"	
		Assgd. 11/16/48 to							
		S.J.Pauly							
L-8928	July 2, 1936	Peter Pauly	All	3	15	11	653.20	Powell	Pending.
		Assgd. 6/18/45 to	All	5	15	11	650.80	"	Cancelled March 1937 account sale to other party.
		Williams & Pauly	N½, N½SW¼, SE¼	1	15	12	557.64	"	
		Assgd. 12/31/48 to							
		Harry C. Pauly							
L-10086	May 13, 1940	Williams & Pauly	All	3	11	11	627.72	Powell	Cancelled May 3, 1943 account sale to lessee.
			All	5	"	"	626.80	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	15	"	"	644.29	"	
			All	31	12	11	663.13	"	
			All	33	"	"	640.00	"	

[fol. 192]

Grazing Leases Issued to A. W. Bradshaw and Bradshaw Land & Livestock Company

Year	Acres
1936	320.00
1937	320.00
1938	---
1939	---
1940	7,279.41
1941	7,919.41
1942	6,319.41
1943	6,319.41
1944	4,412.85
1945	4,412.85
1946	4,412.85
1947	4,412.85
1948	2,907.16
1949	2,907.16
1950	2,907.16
1951	2,907.16

(p. 158 – fol. 193)

[fol. 193]

GRAZING LEASES ISSUED TO A. W. BRADSHAW AND BRADSHAW LAND & LIVESTOCK CO.

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-9027	Sept. 22, 1936	Bradshaw Land & Livestock Company	S½	25	9	52	320.00	Custer	Cancelled Dec. 11, 1937 account default in rental
L-9973	March 23, 1940	Bradshaw Land & Livestock Co. and Madge I. Holmes. Interest of B.L.L.Co. Assgd. 4/2/42 to J. R. Bradshaw Interest of Madge I. Holmes assgd. 3/16/45 to Jim Rayburn Assgd. 4/14/47 to Albert Bixler	All	1	7	51	640.40	Custer	Assigned April 14, 1947 to Albert Bixler
			Part east of river	35	8	51	238.25	"	
			All	7	7	52	627.04	"	
L-9975	March 23, 1940	Bradshaw Land & Livestock Co.	All	13	8	51	640.00	Custer	Cancelled April 15, 1942 - new lease issued
			Part east of river	23	"	"	347.16	"	
			All	25	"	"	640.00		
L-9976	March 23, 1940	Bradshaw Land & Livestock Co.	All	31	8	52	630.96	Custer	Cancelled April 15, 1942 - new lease issued
L-10040	April 15, 1940	Bradshaw Land & Livestock Co.	All	17	7	52	640.00	Custer	Cancelled April 15, 1942 - new lease issued
L-10058	April 20, 1940	Bradshaw Land & Livestock Co.	S½	25	9	52	320.00	Custer	Cancelled May 8, 1941 account sale to lessee
			All	35	"	"	640.00	"	
L-10214	Dec. 15, 1940	Bradshaw Land & Livestock Co.	All	35	9	51	640.00	Custer	Cancelled April 15, 1942 - new lease issued
			All	5	7	52	635.60	"	
			All	15	9	52	640.00	Custer	Cancelled May 2, 1941 account sale to lessee
L-10339	April 24, 1941	Bradshaw Land & Livestock Co.	All	9	7	52	640.00	Custer	Cancelled April 15, 1942 - new lease issued
L-10596	April 14, 1942	A. W. Bradshaw	All	13	8	51	640.00	Custer	Pending
			Part east of river.	23	"	"	347.16	"	
			All	35	9	51	640.00	"	
L-10597	April 14, 1942	J. R. Bradshaw-A. W. Bradshaw executor	All	5	7	52	635.60	Custer	Cancelled Oct. 1, 1943 account sale to lessee
			All	9	"	"	640.00	"	
			All	31	8	52	630.96	"	
			All	25	8	51	640.00	Custer	Pending
			All	17	7	52	640.00	"	

[fol. 194]

Grazing Leases Issued to W. R. Woodson

Year	Acres
1931	640.00
1932	640.00
1933	1,280.00
1934	3,161.68
1935	2,848.05
1936	5,549.79
1937	6,218.43
1938	1,308.64
1939	1,950.00
1940	668.64
1941	1,308.64
1942	1,948.64

GRAZING LEASES ISSUED TO W. R. WOODSON, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-2703	July 8, 1915	Warren R. Woodson	All	27	15	44	640.00	Garfield	Cancelled March 1916 account sale to other party
L-3279	May 9, 1918	Warren R. Woodson	All	19	15	44	646.24	Garfield	Cancelled Jan. 7, 1930 account sale to lessee
L-7078	Sept. 17, 1931	W. R. Woodson Assgd. 9/27/34 to Crow Rock Corp.	All	21	14	44	640.00	Garfield	Cancelled Dec. 19, 1934 account sale to lessee
L-7673	Oct. 28, 1933	W. R. Woodson Assgd. 5/22/37 to Crow Rock Corp.	All	35	13	44	640.00	Rosebud	Cancelled Nov. 3, 1937 account sale to lessee
L-7852	March 21, 1934	W. R. Woodson	All less school site	5	12	45	603.60	Custer	Cancelled Sept. 4, 1937 account default in rental
L-7903	April 14, 1934	W. R. Woodson	All	17	13	46	640.00	Prairie	Cancelled Feb. 25, 1935 at request of lessee
			All	19	"	"	638.08	"	
L-8629	Oct. 28, 1936	W. R. Woodson	S½	7	13	44	326.37	Garfield	Cancelled March 4, 1937 account default in rental
L-8697	Jan. 3, 1936	W. R. Woodson	All	27	12	45	640.00	Custer	Cancelled Jan. 22, 1938 at request of lessee
L-8744	Feb. 10, 1936	W. R. Woodson	All	15	11	45	640.00	Custer	Assigned March 17, 1937 to R. P. Findleter
			All less highway	17	"	"	636.36	"	
			N½	21	"	"	320.00	"	
			All less highway	29	"	"	636.36	"	
			NW¼, S½	33	"	"	468.20	"	
L-8986	/ Aug. 24, 1936	W. R. Woodson	All less highway	5	11	45	638.90	Custer	Cancelled Feb. 3, 1937 - term expired
L-9269	July 15, 1937	W. R. Woodson	All	7	4	45	668.64	Custer	Cancelled May 26, 1942 account sale to lessee
L-9765	July 1, 1939	W. R. Woodson	All	5	3	45	641.36	Custer	Cancelled Nov 3, 1939 at request of lessee
			All	33	4	45	640.00	"	
L-10479	Sept. 22, 1941	W. R. Woodson	All	9	3	45	640.00	Custer	Assigned March 17, 1942 to T. B. Van Horn
L-10578	March 20, 1942	W. R. Woodson	All	17	4	45	640.00	Custer	Cancelled May 26, 1942 account sale to lessee

[fol. 196]

Grazing Leases Issued to M. C. Simpson

Year	Acres
1939	1,280.00
1940	1,280.00
1941	1,280.00
1942	1,280.00
1943	1,280.00
1944	1,280.00
1945	640.00
1946	640.00
1947	640.00
1948	640.00
1949	640.00
1950	640.00
1951	640.00

(p. 162 - fol. 197)

GRAZING LEASES ISSUED TO M. C. SIMPSON, VOLBORG, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp.	Rge.	Acres	County	Remarks
					S	E			
L-9650	Jan. 24, 1939	Milton C. Simpson	All	15	1	49	640.00	Powder River	Pending
L-9894	Dec. 14, 1939	Milton C. Simpson	All	23	1	49	640.00	Powder River	Cancelled Nov. 28, 1944 account sale to lessee

[fol. 197a]

Grazing Leases Issued to George M. Williamson

Year	Acres
1942	3,819.64
1943	3,819.64
1944	3,819.64
1945	1,259.64
1946	634.92
1947	634.92
1948	634.92
1949	634.92
1950	634.92
1951	634.92

GRAZING LEASES ISSUED TO GEORGE M. WILLIAMSON, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp.	Rge.	Acres	County	Remarks
					N	E			
L-2747	Oct. 14, 1915	George M.Williamson	All	13	13	44	640.00	Garfield	Cancelled Feb. 1916 account sale to other party
L-9723	Apr. 22, 1939	A. G. Williamson Assgd. June 18,1942 to George M.Williamson	All less Roadway	9	15	33	634.92	Garfield	Pending
			All	21	"	"	640.00	"	Cancelled Dec. 27, 1944 account sale to other party
			All	23	"	"	640.00	"	Cancelled Oct. 31, 1944 account sale to other party
			All	27	"	"	640.00	"	
			All	33	"	"	640.00	"	
			All	31	"	"	624.72	"	Cancelled March 27, 1945 account sale to lessee

[fol. 199]

Grazing Leases Issued to Wallace Ulmer

Year	Acres
1933	4,473.68
1934	9,547.04
1935	9,547.04
1936	6,350.88
1937	8,877.08
1938	8,237.08
1939	8,237.08
1940	6,328.44
1941	6,328.44
1942	6,328.44
1943	6,328.44
1944	6,957.36
1945	5,677.36
1946	5,677.36

(p. 166 - fr. 200)

GRAZING LEASES ISSUED TO WALLACE ULMER, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.Twp.Rge.			Acres	County	Remarks
					N	E			
L-7714	Dec. 5, 1933	Wallace Ulmer	All	23	13	41	636.40	Garfield	Cancelled April 19, 1939 at request of lessee
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	35	"	"	640.00	Rosebud	
	April 5, 1934		All	5	12	42	632.44	"	
			All	7	"	"	599.92	"	
			All	31	13	42	642.12	"	
L-7720	Dec. 21, 1933	Wallace Ulmer	All	3	11	38	637.28	Rosebud	Cancelled Jan. 29, 1935 account default in rental
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
	Feb. 27, 1934		All	35	12	38	640.00	"	
L-7971	May 10, 1934	Wallace Ulmer	All	33	13	41	640.00	Rosebud	Cancelled June 1, 1936 at request of lessee
L-8157	Sept. 12, 1934	Wallace Ulmer	All	1	18	43	638.88	Garfield	Cancelled Jan. 29, 1935 at request of lessee
			All	35	19	43	640.00	McCone	
L-8221	Nov. 21, 1934	Wallace Ulmer	All	9	12	42	640.00	Rosebud	Cancelled Aug. 25, 1938 at request of lessee
L-8984	Aug. 12, 1936	Wallace Ulmer	All	29	13	41	640.00	Garfield	Cancelled Feb. 8, 1937-term expired-not renewed by lessee
L-9160	April 7, 1937	Wallace Ulmer	All	1	10	40	639.80	Rosebud	Cancelled April 19, 1939 and new lease issued for part
			All	11	"	"	640.00	"	
			All	7	10	41	623.60	"	
			All	17	"	"	640.00	"	
L-9315	Sept. 14, 1937	Wallace Ulmer	All	19	11	41	622.80	Rosebud	Cancelled July 29, 1943 account sale to other party
L-9716	Aug. 1, 1938	Wallace Ulmer	All	11	10	40	640.00	Rosebud	Cancelled July 29, 1943 account sale to other party
			All	7	10	41	623.60	"	
			All	17	"	"	640.00	"	
			All	25	13	41	640.00	Garfield	Cancelled April 12, 1944 account leased to other party
			All	27	"	"	640.00	"	
			All	35	13	41	640.00	Rosebud	Cancelled Nov. 15, 1946 account sale to lessee
			All	7	12	42	599.92	"	
			All	31	13	42	642.12	"	
L-11024	March 6, 1944	Wallace Ulmer	All	5	12	42	632.44	Rosebud	Cancelled Nov. 15, 1946 account sale to lessee
			All	9	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	19	"	"	602.88	"	
			All	21	"	"	640.00	"	

[fol. 201]

Grazing Leases Issued to C. A. Mallett

Year	Acres
1947	6,722.83
1948	18,529.20
1949	18,529.20
1950	9,290.90
1951	9,290.90

GRAZING LEASES ISSUED TO C. A. MALLETT, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-4796	Apr. 8, 1925	C. A. Mallett	All	5	14	52	640.40	Dawson	Cancelled June 9, 1927 account sale to lessee; sale subsequently cancelled and land resold to other party.
L-6161	May 10, 1928	S. E. Heren and Charles Mallett	All	9	4	52	640.00	Custer	Cancelled Feb. 9, 1931 account lessees not interested in continuing.
			Lots 7, 8, 9	3	5	52	69.72	"	
			All	9	"	"	640.00	"	
			Lots 2, 5, 6	11	"	"	50.68	"	
L-6373	July 2, 1929	S. E. Heren and Charles Mallett	All	5	5	52	641.80	Custer	Cancelled March 24, 1931 account lessees not interested in continuing.
			Lots 2,5,6,7, SW¼SW¼	33	6	52	149.57	"	
L-6468	Nov. 8, 1929	S. E. Heren and Charles Mallett	All	5	4	52	802.85	Custer	Cancelled Feb. 9, 1931 account lessees not interested in continuing.
			All	17	5	52	640.00	"	
			All	29	"	"	640.00	"	
L-9520	June 23, 1938	J. H. Drake Asgd. 12/15/47 to C. A. Mallett	Lot 2, N½NE¼, SE¼NE¼, NW¼	15	2	54	314.55	Custer	Pending
			Lot 4	9	"	"	26.64	"	
L-9781	June 21, 1939	Scott E. Hammond Asgd. 12/15/47 to C. A. Mallett	All	29	2	55	640.00	Carter	Cancelled Oct. 20, 1949 account sale to lessee.
L-10404	May 29, 1941	Scott E. Hammond Asgd. 12/15/47 to C. A. Mallett	All	19	2	55	331.16	Carter	Cancelled Oct. 20, 1949 account sale to lessee.
L-10498	Oct. 10, 1941	John McNierney and Charles Wiley Asgd. 12/15/47 to C. A. Mallett	All	13	2	54	640.00	Custer	Cancelled Oct. 20, 1949 account sale to lessee.
			E½, NW¼, W½SW¼, SE¼SW¼	23	"	"	600.00	"	
L-10705	June 26, 1942	John McNierney Asgd. 12/15/47 to C. A. Mallett	All	9	3	55	640.00	Carter	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
			All	21	"	"	640.00	"	
L-10706	June 25, 1942	John McNierney Asgd. 12/15/47 to C. A. Mallett	W½	33	4	55	320.00	Carter	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
L-11175	March 29, 1945	John McNierney Asgd. 12/15/47 to C. A. Mallett	E½	3	2	54	321.12	Custer	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
			All	17	3	54	640.00	Carter	" " "
			All	11	3	55	640.00	Custer	Cancelled Oct. 26, 1949 account sale to other party
			All	19	"	"	329.36	Carter	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
L-11246	Nov. 1, 1945	John McNierney Asgd. 12/15/47 to C. A. Mallett	All	25	2	54	640.00	Custer	Cancelled Oct. 20, 1949 account sale to lessee.
L-11290	Apr. 1, 1946	Paul Henderson Asgd. in 1948 to C. A. Mallett	All	1	1	54	640.00	Custer	Cancelled Oct. 20, 1949 account sale to lessee
			Lots 1,3,4,5,8, NE¼SW¼	3	"	"	150.23	"	
			NE¼NE¼, NW¼NW¼, S½N½, S½	11	"	"	560.00	"	
			All	13	"	"	640.00	"	
			NE¼, NE¼NW¼, S½SW¼, N½SE¼, SW¼SE¼	15	"	"	400.00	"	
			Lots 1,5,8, E½NE¼, NE¼SE¼	27	2	54	211.05	"	
			All	35	"	"	640.00	"	
			All	7	1	55	337.56	Carter	
			All	9	"	"	640.00	"	
			All	17	"	"	640.00	"	
			Lots 1,2, E½E½	19	"	"	248.30	"	
			All	33	2	55	640.00	"	
L-11425	July 7, 1948	C. A. Mallett	All	11	2	54	648.48	Custer	Assigned Oct. 29, 1951 to J. R. Scott, Jr.
			All	5	3	55	686.24	Carter	
			All	7	"	"	326.96	"	
			All	15	"	"	640.00	"	
			All	29	"	"	640.00	"	
			All	35	"	"	640.00	"	
			All	31	4	55	623.00	"	
			All	9	3	54	640.00	Custer	Cancelled Oct. 26, 1949 account sale to other party.
			All	15	"	"	640.00	"	
			All	17	"	"	574.55	"	

[fol. 203]

Grazing Leases Issued to Mrs. Susan Haughian

Year	Acres
1933	1,256.60
1934	1,256.60
1935	1,896.60
1936	1,256.60
1937	1,256.60
1938	1,256.60
1939	2,536.60
1940	2,536.60
1941	1,336.60
1942	2,615.60
1943	2,615.60
1944	2,615.60
1945	8,371.92
1946	8,371.92
1947	8,371.92
1948	8,371.92
1949	8,371.92
1950	8,371.92
1951	8,371.92

(p. 170— fol. 204)

GRAZING LEASES ISSUED TO MRS. SUSAN HAUGHIAN, MILES CITY, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-4660	Oct. 26, 1924	Susan Haughian	All less 30 ac.	1	13	46	609.68	Prairie	Cancelled Dec. 2, 1926 account default in rental.
L-4947	Aug. 3, 1925	J. W. Scriven Asgd. 3/15/27 to Dan Haughian Asgd. to Susan Haughian	All	7	12	47	626.24	Custer	Grazing & cultivation lease cancelled Apr. 25, 1932 and Grazing Lease No. 7213 issued.
L-5267	May 1, 1926	Richard Scriven Asgd. 8/1/28 to Daniel Haughian	All	1	12	46	616.60	Custer	Cancelled Jan. 10, 1934 and Lease No. 7725 issued.
L-5498	Jan. 8, 1927	Dan Haughian	All less school site	35	13	46	639.00	Custer	Cancelled April 14, 1932 account default in rental.
L-5918	April 2, 1928	Daniel Haughian	All	5	12	47	644.76	Custer	Cancelled May 16, 1932 account default in rental.
			All	7	12	48	618.28	"	
L-6085	Oct. 13, 1928	Dan Haughian	All	27	13	46	640.00	Custer	Cancelled Jan. 10, 1934 and Lease No. 7726 issued.
L-6142	Dec. 20, 1928	Dan Haughian	All	21	12	47	640.00	Custer	Cancelled Aug. 3, 1933 account default in rental.
L-6678	June 4, 1930	Dan Haughian	All	9	12	47	640.00	Custer	Cancelled June 9, 1932 account default in rental.
L-7213	April 26, 1932	Susan Haughian	All	7	12	47	626.24	Custer	Grazing & Cultivation lease cancelled Dec. 11, 1933
L-7725	Nov. 1, 1933	Susan Haughian	All	1	12	46	616.60	Custer	Pending
	April 26, 1935	" "	All	9	12	47	640.00	"	Cancelled June 3, 1940--Section leased to other party.
L-7726	Oct. 13, 1933	Susan Haughian	All	27	13	46	640.00	Custer	Cancelled May 16, 1935 account default in rental.
L-8156	July 19, 1934	Susan Haughian	All	9	17	42	640.00	Garfield	Surrendered - not executed.
L-2955N	Nov. 13, 1941	Susan Haughian	NW¼NW¼, SW¼SE¼	26	13	46	80.00	Custer	Pending.
L-9546	July 6, 1938	John Schott	All	25	13	46	640.00	Custer	Pending.
	May 1, 1942	Asgd. 3/11/42 to Susan Haughian	All less 1 ac. tract	35	"	"	639.00	"	
L-9857	Oct. 5, 1939	Susan Haughian	All	13	12	48	640.00	Custer	Cancelled July 23, 1940--Sections leased to other party.
			All	25	"	"	640.00	"	
L-10514	Nov. 13, 1941	Susan Haughian	All	27	13	46	640.00	Custer	Pending
L-11186	May 7, 1945	Susan Haughian and Sons	All	1	12	47	641.20	Custer	Pending
			All	3	"	"	644.12	"	
			All	5	"	"	644.76	"	
			All	7	"	"	626.24	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	21	"	"	640.00	"	

[fol. 205]

Grazing Leases Issued to Madison Valley Stock Ass'n

Year	Acres
1933	37,486.85
1934	37,486.85
1935	36,846.53
1936	36,846.53
1937	36,846.53
1938	36,846.53
1939	26,592.71
1940	49,727.75
1941	49,728.64
1942	49,728.64
1943	49,728.64
1944	49,728.64
1945	49,728.64
1946	49,728.64
1947	48,467.72
1948	48,467.72
1949	48,467.72
1950	48,467.72
1951	48,467.72

(p. 172 - fol. 206)

GRAZING LEASES ISSUED TO MADISON VALLEY STOCK ASSOCIATION OR TO W. A. DENECKE

Lease No.	Date	Lessee	Description	Sec.	Twp. S	Rge. E	Acres	County	Remarks
L-7518	Feb. 1, 1933	Madison Valley Stock	S½	25	8	3	320.00	Gallatin	Cancelled May 20, 1938 account sale to other party.
		Association	All	1	8	4	638.60	"	
		W.A.Denecke, Pres.	All	3	"	"	638.60	"	
			SE¼	5	"	"	160.00	"	
			All	9	"	"	642.48	"	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	615.23	"	
			All	17	"	"	640.00	"	
			All	21	"	"	639.30	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			E½NE¼, NW¼NE¼, NE¼NW¼, S½NW¼, SW¼, NE¼SE¼	27	"	"	440.00	"	
			N½	29	"	"	320.00	"	
			N½, E½SE¼	35	"	"	400.00	"	
			NE¼, E½NW¼, SW¼NW¼, S½	21	7	4	593.82	"	
			All	27	"	"	640.00	"	
			E½	33	"	"	316.02	"	
			All	35	"	"	649.77	"	
			NW¼SW¼	9	7	4	40.00	"	Cancelled July 7, 1938 account sale to other party.
			All	1	9	2	640.20	Madison	Cancelled June 24, 1940 - new lease issued.
			All	11	"	"	640.00	"	
			All	1	8	2	640.32	"	
			All	3	"	"	640.64	"	
			All	5	"	"	640.72	"	
			All	7	"	"	620.20	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	19	"	"	624.00	"	
			All	21	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			E½	33	"	"	320.00	"	
			All	35	"	"	640.00	"	
			All	1	9	3	642.24	Gallatin	
			All	3	"	"	642.60	"	
			All	5	"	"	639.00	Madison	
			All	7	"	"	628.28	"	
			All	9	"	"	640.00	Gallatin	
			All	17	"	"	640.00	Madison	
			All	21	"	"	640.00	Gallatin	
			All	27	"	"	640.00	"	
			All	31	"	"	634.68	Madison	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			All	7	8	3	623.76	Madison	
			All	17	"	"	640.00	"	
			All	19	"	"	626.88	"	
			S½	27	"	"	320.00	Gallatin	
			NW¼, S½	29	"	"	480.00	Madison	
			All	31	"	"	624.76	"	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			SW¼	3	7	4	160.00	"	
			E½	9	"	"	319.11	"	
			SW¼	13	"	"	160.00	"	
			All	15	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	624.08	"	

(p. 173 - fr. 207)

Lease No.	Date	Lessee	Description	Sec.	Twp.	Rge.	Acres	County	Remarks
					S	E			
L-10137	Feb. 1, 1940	Madison Valley Stock Association	All	5	8	2	640.72	Madison	Cancelled March 29, 1946 account sale to other party.
			All	7	"	"	620.20	"	
			All	1	9	2	640.20	Madison	Pending
			All	11	"	"	640.00	"	
			All	1	8	2	640.32	"	
			All	3	"	"	640.64	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	19	"	"	624.00	"	
			All	21	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			E½	33	"	"	320.00	"	
			All	35	"	"	640.00	"	
			All	1	7	2	665.00	"	
			All	3	"	"	663.28	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	640.00	"	
			E½	17	"	"	320.00	"	
			E½	21	"	"	320.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			N½, E½SW¼, SE¼	27	"	"	560.00	"	
			N½	35	"	"	320.00	"	
			All	1	9	3	642.24	Gallatin	
			All	3	"	"	642.60	"	
			All	5	"	"	639.00	Madison	
			All	7	"	"	628.28	"	
			All	9	"	"	640.00	Gallatin	
			All	17	"	"	640.00	Madison	
			All	21	"	"	640.00	Gallatin	
			All	27	"	"	640.00	"	
			All	31	"	"	634.68	Madison	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			All	1	8	3	640.60	"	
			All	3	"	"	639.80	"	
			All	5	"	"	639.92	Madison	
			All	7	"	"	623.76	"	
			All	9	"	"	640.00	Gallatin	
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	Madison	
			All	19	"	"	626.88	"	
			All	21	"	"	640.00	Gallatin	
			All	23	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	29	"	"	640.00	Madison	
			All	31	"	"	624.76	"	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			All	3	7	3	662.16	"	
			All	5	"	"	665.64	Madison	
			All	7	"	"	619.40	"	
			All	9	"	"	640.00	Gallatin	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	Madison	
			All	19	"	"	622.36	"	
			All	21	"	"	640.00	Gallatin	

Lease No.	Date	Lessee	Description	Sec.	Twp.	Rge.	Acres	County	Remarks
					S	E			
L-10137 (cont)			All	23	7	3	640.00	Gallatin	Pending
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	29	"	"	640.00	Madison	
			All	31	"	"	621.28	"	
			All	33	"	"	640.00	Gallatin	
			All	35	"	"	640.00	"	
			SW¼	3	7	4	160.00	"	
			E½	9	"	"	320.00	"	
			SW¼	13	"	"	160.00	"	
			All	15	"	"	640.00	"	
			All	19	"	"	615.60	"	
			All	23	"	"	640.00	"	
			All	25	"	"	624.08	"	
L-7076	Sept. 11, 1931	The Rambouillet Co. W.A.Denecke, Mgr.	All	19	2	7	614.33	Gallatin	Cancelled March 4, 1933 at request of lessee.
L-7517	Feb. 1, 1933	W. A. Denecke	All	19	8	1	640.32	Madison	Cancelled Feb. 1, 1934 at request of lessee.
					S	W			
			All	27	7	1	629.85	Madison	Pending
			All	35	"	"	631.39	"	

Grazing Leases Issued to George Davidson

Year	Acres
1922	10,216.32
1923	17,228.72
1924	17,228.72
1925	17,228.72
1926	13,404.16
1927	13,404.16
1928	13,404.16
1929	13,404.16
1930	17,235.12
1931	17,235.12
1932	15,325.08
1933	12,130.48
1934	16,614.16
1935	22,993.00
1936	25,536.44
1937	26,172.36
1938	21,705.08
1939	21,394.28
1940	24,576.28
1941	27,910.13
1942	30,781.92
1943	26,939.96
1944	26,939.96
1945	28,204.36
1946	10,199.57
1947	10,199.57
1948	10,839.57
1949	10,839.57
1950	10,839.57
1951	10,839.57

GRAZING LEASES ISSUED TO GEORGE DAVIDSON, ROSEBUD, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp.	Rge.	Acres	County	Remarks
					S	E			
L-2149	Nov. 8, 1912	George Davidson	All	35	1	39	640.00	Rosebud	Cancelled Jan. 16, 1914 at request of lessee.
			All	3	2	39	640.00	Rosebud	Cancelled Dec. 1920 - new lease issued to other party.
			All	5	"	"	640.00	Big Horn	
					S	E			
L-2892	Aug. 1, 1916	George Davidson	All	33	1	39	640.00	Big Horn	Cancelled Aug. 1920 - new lease issued to other party.
					N	E			
L-4018	Jan. 18, 1922	George Davidson &	All	1	14	39	639.84	Garfield	Cancelled Sept. 18, 1939 - new lease issued to
		E. C. Bearss	All	11	"	"	640.00	"	George Davidson
			All	13	"	"	640.00	"	Cancelled Jan. 18, 1933 at request of lessee.
			All	15	"	"	640.00	"	
			All	21	"	"	640.00	"	Cancelled July 26, 1926 at request of lessee.
	Feb. 7, 1923		All	23	"	"	640.00	"	Cancelled Jan. 18, 1933 at request of lessee.
			All	25	"	"	640.00	"	Cancelled April 26, 1932 at request of lessee.
L-4067	May 9, 1922	George Davidson &	All	5	14	40	640.92	Garfield	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
		E. C. Bearss	All	7	"	"	629.20	"	
			All	9	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	21	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	19	"	"	632.84	"	Cancelled May 9, 1933 at request of lessee.
			All	29	"	"	640.00	"	Cancelled April 26, 1932 at request of lessee.
			All	31	"	"	634.12	"	
			All	33	"	"	640.00	"	
L-4279	May 16, 1923	Bearss & Davidson	All	13	15	39	640.00	Garfield	Cancelled April 14, 1925 at request of lessee.
			All	15	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	19	15	40	624.56	"	
			All	35	15	39	640.00	"	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
			All	31	15	40	627.84	"	
L-4284	May 21, 1923	Bearss & Davidson	E½	33	15	40	320.00	Garfield	Cancelled April 16, 1938 at request of lessee.
			W½	33	"	"	320.00	"	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
L-5542	March 3, 1927	Charles Coil and	All	13	15	40	640.00	Garfield	Cancelled July 23, 1931 - surrendered by lessees.
(Shearing Pen)		George Davidson							
	May 24, 1930		All	11	"	"	630.04	"	
			All	15	"	"	640.00	"	
L-5692	April 1, 1927	James R. McGowan	All	1	13	40	640.44	Garfield	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
		Assgd. 4/21/30 to	All	11	"	"	640.00	"	
		George Davidson	All	13	"	"	640.00	"	
			All	3	"	"	640.48	"	Cancelled April 26, 1932 - Restored March 9, 1934 - cancelled March 29, 1938 at request of lessee.
	March 9, 1934		All	13	14	40	640.00	"	Cancelled May 15, 1934 at request of lessee.
			All	29	"	"	640.00	"	Cancelled Jan. 8, 1936 at request of lessee.
			All	35	"	"	640.00	"	Cancelled Sept. 18, 1939 - new lease issued to Davidson.
	May 4, 1934		All	23	"	"	640.00	"	Cancelled Aug. 25, 1937 at request of lessee.
	May 15, 1934		All	7	13	41	635.44	"	Cancelled Jan. 8, 1936 at request of lessee.

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-8043	June 12, 1934	George Davidson	All	15	14	39	640.00	Garfield	Cancelled June 28, 1935 at request of lessee.
L-8154	Aug. 9, 1934	George Davidson	All	13	14	40	640.00	Garfield	Cancelled Aug. 27, 1937 at request of lessee.
			All	25	"	"	640.00	"	Cancelled Jan. 8, 1936 at request of lessee.
L-8173	Oct. 3, 1934	George Davidson	All	17	14	41	640.00	Garfield	Cancelled Dec. 13, 1934 - term expired.
			All	21	"	"	640.00	"	
			All	29	"	"	640.00	"	
L-8365	March 26, 1935	George Davidson	All	13	14	39	640.00	Garfield	Cancelled Sept. 18, 1939 - new lease issued.
L-8594	Oct. 7, 1935	George Davidson	All	3	5	42	626.00	Rosebud	Cancelled March 2, 1936 - term expired.
			All	11.	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	23	"	"	640.68	"	
			All	25	"	"	628.28	"	
			All	3	4	43	643.88	"	
			All	5	"	"	642.36	"	
			All	9	"	"	640.00	"	
			All	11	"	"	640.00	"	
			All	13	"	"	636.36	"	
			All	19	5	43	641.04	"	
			All	31	"	"	640.24	"	
L-8932	June 26, 1936	George Davidson	All	19	14	40	632.24	Garfield	Cancelled March 30, 1938 at request of lessee.
L-8962	July 27, 1936	George Davidson	All	15	14	39	640.00	Garfield	Cancelled Feb. 8, 1937 - term expired.
L-8994	Aug. 27, 1936	George Davidson	All	25	14	40	640.00	Garfield	Cancelled Feb. 8, 1937 - term expired.
			All	7	13	41	635.44	"	
			All	17	"	"	640.00	"	
			All	19	"	"	639.36	"	
			All	31	14	41	631.84	"	
L-9090	Feb. 10, 1937	George Davidson	All	1	7	41	640.20	Rosebud	Cancelled Oct. 9, 1941 - with consent of lessee.
			All	35	8	41	640.00	"	
			All	1	"	"	624.68	"	Cancelled June 29, 1940 account sale to other party.
			All	25	9	41	640.00	"	
			All	27	"	"	640.00	"	
			All	35	"	"	640.00	"	
			All	11	8	41	640.00	"	Cancelled April 1, 1949 account sale to other party.
			All	15	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	5	7	42	631.64	"	
			All	3	9	41	638.24	"	Cancelled Nov. 23, 1945 with consent of lessee.
			All	11	"	"	640.00	"	
			All	15	7	42	640.00	"	Cancelled March 19, 1941 account sale to other party.
	June 29, 1940		All	3	8	41	622.00	Rosebud	Cancelled April 1, 1949 account sale to other party.
			All	33	9	41	640.00	"	
			All	9	"	"	640.00	"	Cancelled Nov. 23, 1945 with consent of lessee.
			All	21	"	"	640.00	"	
	March 19, 1941		All	33	7	42	640.25	"	Cancelled April 1, 1949 account sale to other party.
L-9118	March 17, 1937	George Davidson	All	19	13	41	639.36	Garfield	Cancelled March 30, 1938 at request of lessee.
L-9788	July 5, 1939	George Davidson	All	13	5	42	640.00	Rosebud	Pending.
			All	19	5	43	641.04	"	
			All	31	"	"	640.24	"	Cancelled Jan. 1943 - new lease issued to Davidson.

(p.178 - ff. 212)

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-9819	Jan. 1, 1939	George Davidson	W$\frac{1}{2}$	33	15	40	320.00	Garfield	Cancelled Jan. 1, 1945 at request of lessee.
			All	13	13	40	640.00	"	Cancelled Apr. 2, 1945 - new lease issued to Davidson.
			All	1	14	39	639.84	"	Assgd. Oct. 17, 1945 to Wm. Nefsy and T.W.Thompson.
			All	11	"	"	640.00	"	
			All	13	"	"	640.00	"	
			All	35	15	39	640.00	"	
			All	1	13	40	640.44	"	
			All	11	"	"	640.00	"	
			All	5	14	40	640.92	"	
			All	7	"	"	629.20	"	
			All	9	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	17	"	"	640.00	"	
			All	21	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	35	"	"	640.00	"	
			All	31	15	40	627.84	"	
L-10019	April 9, 1940	George Davidson	All	11	5	42	640.00	Rosebud	Pending
L-10309	April 5, 1941	George Davidson	All	15	13	40	640.00	Garfield	Cancelled Jan. 4, 1945 at request of lessee.
			All	5	"	"	638.68	"	Assgd. Oct. 17, 1945 to Nefsy and Thompson.
			All	23	14	40	640.00	"	
L-2889N	April 5, 1941	George Davidson	SW$\frac{1}{4}$NW$\frac{1}{4}$, W$\frac{1}{2}$SW$\frac{1}{4}$	10	14	40	120.00	Garfield	Assgd. Jan. 13, 1945 to Pete Mincoff.
L-10445	July 31, 1941	George Davidson	All	25	14	40	640.00	Garfield	Assgd. Oct. 17, 1945 to Nefsy and Thompson.
L-10517	Nov. 17, 1941	George Davidson	All	33	14	40	640.00	Garfield	Assgd. Oct. 17, 1945 to Nefsy and Thompson.
L-10537	Dec. 1, 1941	George Davidson	All	7	4	43	639.60	Rosebud	Cancelled Feb. 2, 1942 - new lease issued to Davidson.
			All	17	"	"	640.00	"	Cancelled April 23, 1942 at request of lessee.
			All	21	"	"	640.00	"	
L-10538	Jan. 5, 1942	George Davidson	All	5	4	43	642.36	Rosebud	Cancelled Nov. 16, 1942 account sale to other party.
			All	9	"	"	640.00	"	
			All	15	"	"	640.00	"	Cancelled April 21, 1942 at request of lessee.
	Feb. 17, 1942		All	7	"	"	639.60	"	Cancelled Nov. 16, 1942 account sale to other party.
	April 21, 1942		All	17	"	"	640.00	"	Cancelled Nov. 16, 1942 account sale to other party.
L-10594	April 1, 1942	George Davidson	All	3	13	40	640.48	Garfield	Assgd. Oct. 17, 1945 to Nefsy and Thompson
			All	9	"	"	640.00	"	
			All	19	14	40	632.24	"	
			All	21	13	40	640.00	"	Cancelled April 2, 1945 - new lease issued to Davidson.
L-2985N	April 1, 1942	George Davidson	Lot 1, SW$\frac{1}{4}$NW$\frac{1}{4}$	4	13	40	80.05	Garfield	Assgd. Oct. 17, 1945 to Nefsy and Thompson.
			Lots 1, 2, E$\frac{1}{2}$W$\frac{1}{2}$	30	14	40	236.86	"	
L-10811	Jan. 5, 1943	George Davidson	All	31	5	43	640.24	Rosebud	Pending.
L-11135	Jan. 4, 1945	Joseph Chiaberto Assgd. 4/13/48 to George Davidson	All	15	13	40	640.00	Garfield	Pending.
L-11156	Feb. 27, 1945	George Davidson	All	23	13	40	640.00	Garfield	Pending.
L-11177	April 12, 1945	George Davidson	All	1	12	40	624.40	Rosebud	Pending.
L-11178	April 1, 1945	George Davidson	All	13	13	40	640.00	Garfield	Pending.
			All	21	"	"	640.00	"	
L-11449	March 28, 1949	George Davidson	All	3	8	41	622.00	Rosebud	Pending.
			All	11	"	"	640.00	"	
			All	15	"	"	640.00	"	
			All	23	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	33	9	41	640.00	"	
			All	5	7	42	631.64	"	
			All	33	"	"	640.25	"	

[fol. 213]

Grazing Leases Issued to Frank Carey

Year	Acres
1935	7,993.84
1936	7,353.84
1937	9,724.62
1938	11,005.80
1939	11,005.80
1940	11,005.80
1941	3,851.20
1942	3,196.64
1943	3,196.64
1944	3,196.64
1945	3,196.64
1946	3,196.64
1947	3,196.64
1948	1,921.18
1949	1,921.18
1950	1,921.18
1951	1,921.18

GRAZING LEASES ISSUED TO FRANK CAREY, BOULDER, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp.	Rge.	Acres	County	Remarks
					N	W			
L-3393	Nov. 13, 1918	B.Frank Carey & Phillip Gillick	All	33	3	3	640.00	Jefferson	Cancelled April 1919 account sale to other party
L-3406	Nov. 26, 1918	Frank Carey and Phillip Gillick for Whitehall Stock Assn. Bull Mtn.Stock Assn.	All	5	3	3	664.00	Jefferson	Cancelled June 25, 1935 - new lease issued
			All	7	"	"	734.00	"	
			All	17	"	"	647.32	"	
			All	19	"	"	735.56	"	
			All	29	"	"	652.68	"	
			All	29	4	3	640.00	"	
			All	31	"	"	674.28	"	
			All	1	3	4	661.04	"	
			All	13	"	"	640.00	"	
			All	25	4	4	669.48	"	
			All	35	"	"	635.48	"	
L-3627	April 1, 1919	Frank Carey & Phillip Gillick for Whitehall Stock Assn.	All	17	4	3	643.10	Jefferson	Cancelled July 22, 1925 account default in rental
L-3637	June 23, 1919	Frank Carey & Phillip Gillick for Whitehall Stock Assn.	All	9	2	3	640.00	Jefferson	Cancelled Jan. 1920 - lease not executed by lessees
L-3669	May 25, 1921	Frank Carey for Whitehall Stock Assn.	All	9	2	3	640.00	Jefferson	Cancelled July 22, 1925 account default in rental
L-5785	Nov. 17, 1927	Frank Carey	All	9	2	3	640.00	Jefferson	Cancelled April 25, 1933 account default in rental
L-6234	Feb. 25, 1929	Frank Carey	All	13	3	3	640.00	Jefferson	Cancelled April 23, 1930 account default in rental
L-6873	Feb. 4, 1931	Frank Carey	All	33	3	3	640.00	Jefferson	Cancelled April 26, 1933 account default in rental
L-7140	Jan. 22, 1932	Frank Carey	All	5	4	2	556.95	Jefferson	Cancelled April 26, 1933 account default in rental
			NW¼, NW¼SW¼	17	5	2	200.00	"	
			All	19	"	"	654.56	"	
			All	21	"	"	640.00	"	
			All	27	"	"	640.00	"	
			All	29	"	"	640.00	"	
			All	31	"	"	680.16	"	
			All	33	"	"	652.56	"	
			All	35	"	"	645.74	"	
L-8303	March 12, 1935	Frank Carey	All	33	3	3	640.00	Jefferson	Pending
	March 28, 1938		All	1	3	3	641.18	"	Pending
			All	13	"	"	640.00	"	
L-8469	April 1, 1935	Frank Carey & Phillip Gillick and J.M.Crow, Trustees for Bull Mtn.Stock Assn.	All	29	4	3	640.00	Jefferson	Cancelled Aug. 27, 1935 account sale to lessee
			All	5	3	3	664.00	"	Cancelled May 6, 1940 - new lease issued to Bull Mtn.Stock Asn. L-10073
			All	7	"	"	734.00	"	
			All	17	"	"	647.32	"	
			All	19	"	"	735.56	"	
			All	29	"	"	652.68	"	
			All	31	4	3	674.28	"	
			All	1	3	4	661.04	"	
			All	13	"	"	640.00	"	
			All	25	4	4	669.48	"	
			All	35	"	"	635.48	"	
	July 20, 1937		Lots 1,2,3,4,SW¼NE¼,S½NW¼,SW¼	1	2	4	440.76	"	
L-9162	Feb. 19, 1937	Frank Carey	All	19	5	2	554.56	Jefferson	Cancelled Sept. 23, 1937 - term expired
L-9316	July 17, 1937	Frank Carey & Cary Quaintance	All	19	5	2	654.56	Jefferson	Frank Carey's interest assigned to Mike Quinn 1/29/48
			All	29	"	"	640.00	"	
			N½, SW¼, N½SE¼, SW¼SE¼	31	"	"	635.46	"	

[fol. 215]

Grazing Leases Issued to William Magelssen

Year	Acres
1939	4,461.52
1940	4,461.52
1941	7,012.94
1942	9,549.98
1943	9,549.98
1944	9,549.98
1945	9,549.98
1946	4,149.92
1947	5,700.84
1948	---
1949	---
1950	640.00
1951	960.00

(p. 182 = fol. 216)

[fol. 216]

GRAZING LEASES ISSUED TO WILLIAM MAGELSSEN, BILLINGS, MONTANA

Lease No.	Date	Lessee	Description	Sec.	Twp. N	Rge. E	Acres	County	Remarks
L-3394	Nov. 13, 1918	Smith Bros. Sheep Co. Assgd. 3/30/51 to Thomas M. Dines, William Farr and William Magelssen Assgd. 4/18/51 to 71 Ranch Co.	E½	33	6	9	320.00	Meagher	Pending.
L-6193	Feb. 12, 1929	E. W. Wayman Assgd. 2/20/47 to William Magelssen	All	19	10	35	625.28	Rosebud	Cancelled April 28, 1947 account sale to lessee.
L-9168	April 1, 1937	Knute Germo Assgd. 2/20/47 to William Magelssen	All	1	11	37	639.28	Rosebud	Cancelled April 24, 1947 account sale to lessee.
			All	3	"	"	637.60	"	
			All	25	12	37	640.00	"	
			All	35	"	"	640.00	"	
			All	7	11	38	619.44	"	
			All	17	"	"	640.00	"	
			All	31	12	38	619.24	"	
L-9720	March 30, 1939 March 20, 1942	William Magelssen	All	11	11	38	640.00	Rosebud	Cancelled in July 1945 account sale to lessee.
			All	15	"	"	640.00	"	
			All	21	"	"	640.00	"	
			All	35	"	"	640.00	"	
			All	33	12	38	640.00	"	
			All	19	10	39	628.16	"	
			All	31	11	39	633.36	"	
L-10242	Feb. 10, 1941	William Magelssen	All less R/W	33	10	35	631.42	Rosebud	Cancelled in July & Nov. 1945 account sale to lessee.
			All	9	11	38	640.00	"	
			All	25	"	"	640.00	"	
			All	27	"	"	640.00	"	
L-10592	April 1, 1942	William Magelssen	All	13	13	36	640.00	Garfield	Cancelled in June & Sept. 1946 account sale to lessee.
			All	25	"	"	638.80	Rosebud	
			All	7	10	37	618.24	"	
			All	31	13	37	640.00	"	
L-11154	Feb. 27, 1945	Albert Lang Assgd. 1/27/50 to William Magelssen	All	23	10	34	640.00	Rosebud	Pending
L-11202	June 5, 1945	J. K. Ford Assgd. 2/20/47 to William Magelssen	All	29	10	35	640.00	Rosebud	Cancelled April 28, 1947 account sale to lessee.
L-11277	March 22, 1946	William Magelssen	All	21	7	38	640.00	Rosebud	Cancelled Sept. 6, 1946 account sale to lessee.
			N½	23	"	"	320.00	"	
L-11283	April 6, 1946	William Magelssen	All	3	8	37	652.88	Rosebud	Cancelled July 1, 1946 account sale to lessee.

[fol. 217]

EXHIBIT "C" TO STIPULATION

GRAZING LEASE INFORMATION FOR ANTI-TRUST SUIT

WASHINGTON AND OREGON

Lease No.	Date of Lease	Lessee & Address	Location of Lease (County)	Acres	Date of Canc.	Remarks
1727	Nov. 22, 1943	D.F.Lange, Palouse, Wn.	Franklin	13,305.32	Active	Lange acquired lease from J.R.Ayres by assignment dated 5/19/45.
792	July 1, 1915	V.O.McWhorter, Prosser, Wn.	Benton	9,610.99	7/18/32	Acquired from Geo.Prior & Sons by assignment 7/14/30
1292	Nov. 16, 1925	" "	"	9,773.29	12/14/39	Cancelled only to draw up lease in new company name. (same man)
1523	Oct. 23, 1935	" "	Grant	9,539.40	10/23/36	Cancelled to comply with Taylor Grazing Act.
1590	Nov. 15, 1937	" "	Benton	3,677.72	4/23/40	Cancelled at request of lessee.
1629	Nov. 1, 1939	" "	"	6,859.58	11/1/45	Taken by USA for Hanford Project. Supercedes GL 1292.
1664	Nov. 15, 1940	" "	"	2,967.03	Assigned	Assigned to Arthur Bohoskey 3/9/46.
1753	Nov. 1, 1945	" "	"	885.40	11/30/49	Lands sold to lessee.
1046	July 1, 1919	Alex Dunnett, Yakima, Wn.	Kittitas	4,480.42	9/8/26	Lds sold to J. Neils Lbr.Co.
1275	May 22, 1925	" "	"	3,573.18	10/31/36	Lds sold to Cascade Lbr.Co.
1459	Jan. 2, 1929	" "	"	5,064.05	Active	
1539	Apr. 24, 1936	Russell Brown, Vantage, Wn.	Stevens	3,712.71	1/27/49	Cancelled at request of lessee.
1701	Dec. 1, 1942	" "	Benton	10,943.76	3/1/43	Taken by USA for Hanford Project.
1586	Aug. 23, 1937	A.D.Olson, Ellensburg, Wn.	Grant	11,459.40	1/25/40	Cancelled in favor of new lease to same party. GL 1630.
1630	Jan. 1, 1940	" "	Grant	11,459.40	Active	
1702	Dec. 24, 1942	" "	Grant	4,542.44	6/30/43	Lds taken by USA for Hanford Project.

[fol. 219] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

No. 2277

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

DECISION—June 25, 1956

By this action the government seeks to have certain contractual provisions contained in deeds and leases granted by defendants held illegal as contravening Section 1 of the Sherman Antitrust Act, 26 Stat. 209.[1] The action is authorized by Section 4 of the Act. Injunctive relief is sought to prevent enforcement of the contract provisions which defendants designate as "preferential routing agreements" and government counsel refer to as "traffic clauses." The terms of the clauses being the same under either designation, for brevity and convenience the latter term will be used herein.

The complaint was filed May 26, 1949. Since then, by answer, interrogatories, depositions and stipulation, many facts have been agreed to. The government moves for summary judgment under Rule 56(a)(c) on the undisputed facts. Discretion is not involved in considering the facts and the motion can only be granted to such extent as the law may warrant on facts shown in the record beyond genuine issue.

The material facts thus shown are: Defendant Northern Pacific Railway Company, a Wisconsin corporation (the NP herein), is the successor to a land grant railroad which [fol. 220] in 1864 was chartered by act of Congress for the purpose of constructing a railroad from Lake Superior to Puget Sound.[2] The NP is primarily engaged as a common carrier in the business of transporting passengers and freight in interstate commerce. Defendant Northwestern Improvement Company, a Delaware corporation (the Land Company herein) and wholly owned subsidiary of the NP, conducts the business of selling, leasing and managing NP lands.

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[1] "Every contract, . . . in restraint of trade or commerce among the several States, . . . is hereby declared to be illegal. . . . "

By congressional land grants the NP acquired slightly less than 39,500,000 acres of public land located, except for about 100,000 acres, in the area of the states in which the NP railway lines are now located, i.e., Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington and Oregon.

Prior to the commencement of this action much of the granted land had been sold. Defendants now own approximately 2,700,000 acres of land exclusive of land for right-of-way, etc. classified by the Interstate Commerce Commission as for "transportation purposes." Some of the presently owned land was not acquired under the grants of public land. Approximately 21,000,000 acres of land were sold without reservation of any kind. Of the acreage sold with mineral reservations, 6,500,000 acres remain subject to such reservation.

The lands now owned by the defendants, as well as lands which they formerly owned and sold, are of many types. Some contain timber, iron ore, coal, oil and other natural resources. Some of the lands have been used for grazing and agriculture, while still others have been devoted to industrial developments of various kinds.

Traffic clauses in a variety of forms have been included [fol. 221] in some of defendants' deeds and in almost all of the leases of lands in each of the categories referred to. The minimal obligation of all of the clauses in question requires the grantee or lessee to route via NP railway shipments of commodities produced by or on the land sold or leased, provided neither a lower rate nor better service be available from a competing line. Typical examples of defendants' traffic clauses are given below.[3]

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[2] For summary of the history of the NP land grants see *United States* v. *Northern Pacific Railway Co., et al,* 256 U.S. 51 and *United States* v. *Northern Pacific Railway Co., et al,* 311 U.S. 317.

The government contends that under the stated facts, shown in the record without genuine dispute, the traffic clauses provide for restraints of trade which are unreasonable *per se* and therefore violative of Section 1 of the Sher- [fol. 222] man Act under principles announced in the "tying" cases.[4] The essence of the contention is that defendants' dominance of NP land as a tying commodity or device has been used to foreclose or restrict competition in the tied commodity, transportation service to and from the land, the commerce in which is not "inconsequential or insubstantial" in amount.

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[3] A grazing lease: "All shipments of livestock, wool, mutton or beef made by or for the lessee, destined for points on the line of the Northern Pacific Railway, or its connections, shall be shipped over the Northern Pacific Railway, whenever its freight rates do not exceed the rates over other lines."

A lease of coal lands: "The lessee covenants that all coal removed from the premises as well as from adjacent lands now or hereafter controlled by it, as far as such coal is destined for rail shipment, and all incomeing freight destined for use in the field of which the premises are a part, shall be shipped over the Northern Pacific Railway, provided its rates and service shall equal those of any competing line."

A timber contract or a contract for the sale of timberland: "The purchaser agrees, as one of the material considerations of this contract, that rates being equal, he will ship via the Northern Pacific Railway all logs, poles, lumber and other products manufactured from the timber cut under this contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by this contract. Such shipments shall be made from time to time in the ordinary course of business as the timber is manufactured. Where the point of destination of the manufactured product is not on the line of the Northern Pacific Railway, such shipments shall be routed to favor said railway with the longest haul, if the expense to the purchaser is not increased over the cost of shipment over another rail line. The purchaser shall make monthly reports to the Railway Company of shipments under this provision and shall permit the Railway Company to examine his records at any convenient time or place for the purpose of verifying such reports."

[4] *Motion Picture Patents Co.* v. *Universal Film Mfg. Co., et al,* 243 U.S. 502 (1917); *McBoyle* v. *United States,* 283 U.S. 27 (1931); *International Business Machines Corp.* v. *United States,* 298 U.S. 131 (1936); *Leitch Mfg. Co.* v. *Barber Co.,* 302 U.S. 458 (1937); *Interstate Circuit Inc. et al* v. *United States,* 306 U.S. 208 (1939); *Ethyl Gasoline Corp. et al* v. *United States,* 309 U.S. 436 (1940); *Morton Salt Co.* v. *G. S. Suppiger Co.,* 314 U.S. 488 (1942); *B. B. Chemical Co.* v. *Ellis, et al,* 314 U.S. 495 (1942); *United States* v. *Masonite Corp., et al,* 316 U.S. 265 (1942); *Mercoid Corp.* v. *Mid-*

Defendants contend that the rules of the tying cases are inapplicable to the facts of the instant case; that if so, neither the necessary dominance over the market in the tying commodity nor the required substantial volume of commerce in the tied commodity appears on the present record; and that defendants are entitled to present proof in support of their affirmative defenses alleging that in practice and effect the restraint of the traffic clauses is reasonable and beneficial.

Most, if not all, of the decisions of the United States Supreme Court in tying cases based on either Sherman Act or Clayton Act or both, are listed in footnote 4. [fol. 223] Not any one of the cited cases is closely apposite in facts to the present case; but the facts of this case bring it squarely within a formula derived from all of the cited cases: When (1) a seller or lessor, enjoying market control of a particular commodity, in contracts for the sale or lease of such commodity, requires buyer or lessee to purchase a distinctly different and separate commodity, and (2) the amount of interstate commerce in the tied commodity is not insignificant or insubstantial, the tying arrangement is illegal *per se* under Section 1 of the Sherman Act.

The rationale of the tying doctrine is briefly stated in the latest of the decisions, *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594 (1953):

Continent Investment Co., et al, 320 U.S. 661 (1944); *Mercoid Corp.* v. *Minneapolis Honeywell Regulator Co.*, 320 U.S. 680 (1944); *Hartford Empire Co.* v. *United States*, 323 U.S. 386 (1945); *Associated Press et al* v. *United States*, 326 U.S. 1 (1945); *International Salt Co.* v. *United States*, 332 U.S. 392 (1947); *United States* v. *Griffith et al*, 334 U.S. 100 (1948); *United States* v. *Paramount Pictures, Inc. et al*, 334 U.S. 131 (1948); *Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594 (1953).

> "Tying arrangements, we may readily agree, flout the Sherman Act's policy that competition rule the marts of trade. Basic to the faith that a free economy best promotes the public weal is that goods must stand the cold test of competition; that the public, acting through the market's impersonal judgment, shall allocate the Nation's resources and thus direct the course its economic development will take. Yet '[t]ying agreements serve hardly any purpose beyond the suppression of competition.' *Standard Oil Co. of California* v. *United States*, 337 U.S. 293, 305 (1949). By conditioning his sale of one commodity on the purchase of another, a seller coerces the abdication of buyers' independent judgment as to the 'tied' product's merits and insulates it from the competitive stresses of the open market. But any intrinsic superiority of the 'tied' product would convince freely choosing buyers to select it over others, anyway. Thus '[i]n the usual case only the prospect of reducing competition would persuade a seller to adopt such a contract and only his control of the supply of the tying device, whether conferred by patent monopoly or otherwise obtained, could induce a buyer to enter one.' Id., at 306. Conversely, the effect on competing sellers attempting to rival the 'tied' product is drastic: to the extent the enforcer of the tying arrangement enjoys market control, other existing or potential sellers are foreclosed from offering up their goods to a free competitive judgment; they are effectively excluded from the [fol. 224] marketplace.
>
> "For that reason, tying agreements fare harshly under the laws forbidding restraints of trade. . . ." (p. 605-606)[5].

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[5] Existence of the necessary tying elements was not found in the *Times-Picayune* case. If in that case defendant newspaper publisher had required by contract provision the purchasers of advertising space to subscribe to defendant's papers, prices and service being equal to that of competing papers, with substantiality satisfied, the illegality *per se* of the requirement could hardly be doubted. The postulated situation is more analogous to the present case than the facts found in *Times-Picayune*.

The Supreme Court sustained summary judgments finding tying arrangements violations *per se* of the Sherman Act in *Associated Press et al* v. *United States*, 326 U.S. 1 (1945) and in *International Salt Co., Inc.* v. *United States*, 332 U.S. 392 (1947). Application of tying principles is not limited to cases involving monopolies granted by patent and copyright. *United States* v *Griffith et al*, 334 U.S. 100 (1948); *Times-Picayune* v. *U.S.*, supra. Specific intent to restrain trade or build monopoly is not necessary for a finding of antitrust law violation and "it is unreasonable *per se* to foreclose competitors from any substantial market." *U.S.* v. *Griffith*, supra; *International Salt Co., Inc.* v. *U.S.*, supra.

The traffic clauses in question prohibit grantees and lessees of NP lands from a free choice in the selection of transportation routing in the shipment of commodities to and from the lands sold or leased. Admittedly, a large, if not major, portion of such shipments are in interstate commerce. Obviously, the traffic clauses provide at least a nominal "restraint of trade or commerce among the several states." While the Sherman Act provides that "every" contract in such restraint is illegal, ever since *Standard Oil* v. *United States*, 221 U.S. 1 (1911), only unreasonable restraints are held condemned by the Act. Unreasonable restraints are those which tend to create monopoly by restricting consumers or purchasers from enjoyment of the advantages of free competition. *Standard Oil* v. *U.S.* supra; *U.S.* v. *American Tobacco Co.*, 221 U.S. 106 (1911). Among the restraints held to be unreasonable *per se* are those effecting price fixing, boycott and a tying arrangement in- [fol. 225] volving the two elements previously stated.

Defendants argue that the first tying element, i.e., market domination over the tying product, is not established because the record does not show the proportion of NP lands of various types to the total of the lands of the same types sold and leased in the area of defendants' operations. This contention ignores the plain language of the cited decisions, providing that market dominance of "the tying commodity" is required. The tying commodity need only be the particular property or product to which forced purchase of the second commodity is tied; certainly it does not necessarily include all of the similar and competing commodities which may be in the market. Restraints of trade to be illegal under Section 1 of the Sherman Act must necessarily *tend* to monopoly but need not fully or substantially achieve it. In *International Salt Co.* v. *U.S.*, supra, market dominance of defendant's particular salt dispenser was held sufficient to sustain the first element of an unreasonable restraint *per se,* even though other dispensers were available in the market. *Standard Oil Co. of Calif., et al* v. *United States,* 337 U.S. 293 (1949) affirms such view of the *International Salt Co.* decision in the following language: "It was not established that equivalent machines were unobtainable, it was not indicated what proportion of the business of supplying such machines was controlled by defendant, and it was deemed irrelevant that there was no evidence as to the actual effect of the tying clauses upon competition." Defendants urge that *U.S.* v. *E.I. DuPont de Nemours & Co.*, 351 U.S. 377, decided after argument of the present case, holds in effect that the market dominance required as the first element of an illegal tying device is synonymous with the monopoly that is a requisite for violation of paragraph 2 of the Sherman Act. *DuPont,* grounded solely on paragraph 2, was not concerned with a tying arrangement and neither the tying principles nor the decisions in which they have been developed are discussed in the opinion. As the majority opinion indicates and the concurring opinion states: "Sections 1 and 2 of course implicate different considerations." Nothing in the reasoning or language of the Supreme Court decisions re- [fol. 226] quires adoption of defendants' view of the market involved in the first element of the tying formula.

The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic clauses in question on the grantees and lessees of the land.

Existence of the second of the tying elements is dependent on the amount of commerce in the tied commodity with, at most, only remote regard to the total amount of commerce in commodities of a like or similar kind in the same market area. The record amply shows that actual or potential commerce in transportation of commodities from the properties subject to the traffic clauses is very substantial, however that commerce may compare with the whole volume of commodity transportation in the area served by NP.[6] The admitted amount of commerce in transportation restrained by the traffic clauses in each of the categories in question is not inconsequential or insubstantial.

[fol. 227] The stipulation of the parties filed May 16, 1950 shows that of the approximate 8,000 industrial leases (including grain elevator and grain warehouse leases), with minor exceptions, all grant a use of right-of-way lands. Such lands are an integral part of the property devoted to railway operations and are directly related to transportation, the asserted tied commodity. Whether under such circumstances the industrial leases involve distinct and separate tied and tying commodites, as held required and found lacking in *Times-Picayune* v. *U.S.*, supra,[7] presents at least a question of fact which precludes summary judgment and will require trial as to all issues pertaining to the industrial leases.

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[6] By their Responses to Plaintiff's Request for Admissions under Rule 36, filed January 14, 1952, defendants admitted the existence of the following leases containing traffic clauses, all valid and subsisting as of 1949, the year in which suit was commenced:

(1) At least 1,000 leases involving more than 1,000,000 acres of grazing lands. (See Response to Request IV)

(2) At least 16 leases of iron ore land, covering 5,261 acres. (See Response to Request VII)

(3) At least 2 leases of coal lands. (See Response to Request VI)

(4) At least 19 oil and gas permits or leases, covering 135,000 acres of land. (See Response to Request V)

In addition, defendants admit the existence of the following contracts for the sale of timber or timberland subject to traffic clauses:

(1) Out of 75 contracts for the sale of timberland, involving over 2,000,000 acres of land and over 21,000,000,000 board feet of timber, at least 42 of such contracts were subject to traffic clauses. (See Response to Request I and Exhibit A)

(2) Out of 210 timber contracts, involving more than 390,000 acres of land and more than 6,000,000,000 board feet of timber, at least 157 of such contracts included traffic clauses. (See Response to Request II and Exhibit B)

On the established facts all of the traffic clauses in question, excepting those in the industrial (including grain elevator and grain warehouse) leases, are shown to be violative of Section 1 of the Sherman Act under the principles enunciated in the tying cases. Findings and decree to such effect will be settled at a hearing for the purpose which may be noted at the convenience of counsel.

Dated this 23 day of June, 1956.

Geo. H. Boldt, United States District Judge

[fol. 228] [File endorsement omitted]

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

MOTION FOR REARGUMENT AND RECONSIDERATION—Filed August 8, 1956

[Title omitted]

Come now defendants by their undersigned attorneys and move the court for reargument and reconsideration of plaintiff's Motion for Summary Judgment in the above entitled case on the ground that the following holding in the court's Memorandum Decision, dated June 23, 1956, to-wit:

> "The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute

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[7] "The common core of the adjudicated unlawful tying arrangements is the forced purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product, resulting in economic harm to competition in the 'tied' market. . . . " *Times-Picayune* v. *U.S., supra.*

> domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic clauses in question on the grantees and lessees of the land."

is contrary to and in conflict with well-settled legal principles, including those recently restated and clarified in *United States of America* v. *E. I. du Pont de Nemours and Company,* decided by the Supreme Court of the United States on June 11, 1956.

This motion is based upon the pleadings, files and proceedings in the above entitled action.

M. L. Countryman, Jr., Dean H. Eastman, Harold G. Boggs, Attorneys for Defendants.

[fol. 229] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

CERTIFICATE OF CLERK, U. S. DISTRICT COURT TO SUPPLEMENTAL RECORD ON APPEAL TO SUPREME COURT OF THE UNITED STATES

United States of America,
Western District of Washington, ss:

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington do hereby certify that pursuant to the provisions of Subdivision 2 of Rule 12, revised, of the Supreme Court of the United States, and designation of counsel, and order of court pursuant to Sec. 4 of Rule 12 of said Supreme Court I am transmitting herewith, supplemental to and as a part of the record heretofore transmitted as the record on appeal herein, the following original papers in the file dealing with the action, to-wit:

153. Findings of Fact and Conclusions of Law, filed August 31, 1956.

154. Partial Final Judgment, filed August 31, 1956.

In Witness Whereof I have hereunto affixed the official seal of said District Court at Seattle and set my hand this 17th day of December, 1956.

[Seal]

Millard P. Thomas, Clerk, By Truman Egger, Chief Deputy.

[fol. 230] [Endorsement of Lodging omitted]

IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

DEFENDANTS' PROPOSED PARTIAL FINAL JUDGMENT— Lodged August 24, 1956

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Defendants.

Receipt is acknowledged of a copy. Margaret H. Brass, Attorney, Dept. of Justice.

August 24, 1956.

[fol. 231] IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Civil No. 2277

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

PARTIAL FINAL JUDGMENT—August 31, 1956

This matter having come on for a hearing before the Court upon a motion of the plaintiff for summary judgment, counsel for the parties having been heard, and the Court having determined, upon consideration of the pleadings, admissions and stipulations on file, that there is no genuine issue between the parties as to any material fact with respect to all of the claims involved in this action other than claims based upon defendants' industrial leases (including grain elevator and grain warehouse leases), and the Court having filed its opinion herein on June 23, 1956, granting the motion for summary judgment with respect to all claims other than claims based on defendants' industrial leases, and it appearing to the Court that there is no just reason for delay in entering a final judgment in accordance with that decision on all of the multiple claims upon which summary judgment has been granted;

It Is Hereby Ordered, Adjudged and Decreed:

1. The Court has jurisdiction of the subject matter hereof and of the parties hereto.

[fol. 232] 2. The defendants Northern Pacific Railway Company (Northern Pacific) and Northwestern Improvement Company (Northwestern) have entered into contracts in restraint of, and have used their ownership and control of land to restrain interstate trade and commerce in the transportation of products in violation of Section 1 of the Act of Congress approved July 2, 1890, as amended, commonly known as the Sherman Act, 15 U.S.C. §1.

3. Every condition, agreement or understanding contained in defendants' lease agreements (except industrial leases, grain elevator leases and grain warehouse leases) or in defendants' contracts for or relating to the sale of timberland or timber, that the lessee or purchaser shall ship products produced on the land, or on adjacent lands, or manufactured from products so produced, over the lines of defendant Northern Pacific or over the lines of a railroad to be designated by Northern Pacific or shall ship incoming freight over the lines of Northern Pacific, are hereby adjudged unlawful and declared null and void.

4. The defendants Northern Pacific and Northwestern, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with

said defendants who receive actual notice of this Final Judgment by personal service or otherwise are hereby perpetually enjoined:

(a) From enforcing or attempting to enforce any condition, agreement or understanding adjudged unlawful in [fol. 233] paragraph 3 hereof.

(b) From entering into any contract, agreement or lease (except industrial leases, including grain elevator and grain warehouse leases) containing provisions which are identical with or similar to those adjudged unlawful in paragraph 3 hereof, or from fixing a price or rental for the sale or lease of land upon the condition, agreement or understanding, directly or indirectly, that the purchaser, assignee, vendee, lessee, or sublessee shall ship products on or from the land, or commodities manufactured from such products, over the lines of Northern Pacific or the lines of any other carrier, or shall ship incoming freight over the lines of Northern Pacific.

(c) From making or carrying out contracts, agreements or understandings having the purpose or effect of continuing, reviving or renewing any contract provision adjudged to be unlawful by paragraph 3 of this Final Judgment.

(d) From requiring any purchaser or lessee of land (except a lessee under an industrial lease, grain elevator lease or grain warehouse lease) or purchaser of timber to make reports of the amount or nature of shipments made by such purchaser or lessee over the lines of Northern Pacific or any other carrier, or to keep records of such shipments, or to permit defendants to have access to any records kept of such shipments.

5. Within 60 days after the entry of this Final Judgment defendants shall, in writing, fairly advise each person [fol. 234] with whom they, or either of them, have a contract containing any condition, agreement or understanding adjudged to be illegal in paragraph 3 hereof of the substantive terms of this Final Judgment. Defendants shall file with the Court proof of compliance with this paragraph.

6. The defendants shall use all reasonable efforts to ascertain the identity of all purchasers or sublessees from

purchasers or lessees of Northern Pacific with whom defendants, or either of them, have or had a contract containing any condition, agreement or understanding adjudged illegal by paragraph 3 hereof, and within 120 days from the entry of this Final Judgment defendants shall serve written notice upon each of such purchasers or sublessees that the contracts are to that extent illegal, null, void and unenforceable. Defendants shall file with the Court proof of compliance with this paragraph.

7. For the purpose of securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on notice reasonable as to time and subject matter made to the principal office of the Northern Pacific Railway Company and Northwestern Improvement Company, and subject to any legally recognized privilege, be permitted:

(a) Access during the office hours of said corporate defendants to all books, ledgers, accounts, correspondence, [fol. 235] memoranda, and other records and documents in the possession or under the control of said corporate defendants relating to any matters contained in this Final Judgment;

(b) Subject to the reasonable convenience of said corporate defendants and without restraint or interference from defendants, to interview officers or employees of said defendants, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this Paragraph 7 shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

8. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment,

for the amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Let this partial final judgment be entered.

Done this 3 day of August, 1956.

Geo. H. Boldt, Judge.

[fol. 236] Presented by: Margaret H. Brass, Attorney, Department of Justice.

Approved as to form: Harold G. Boggs, of Counsel for Defendants.

[fol. 237] [Endorsement of Lodging omitted]

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON

Civil Action No. 2277

[Title omitted]

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Lodged August 13, 1956

Margaret H. Brass, Edward M. Feeney, Attorneys, Department of Justice.

Victor R. Hansen, Assistant Attorney General.

Victor H. Kramer, Attorney.

[fol. 238] IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Civil No. 2277

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW— August 31, 1956

I. Description of Defendants

1. Defendant Northern Pacific Railway Company (Northern Pacific) is a Wisconsin corporation. It was formed in 1870 under the name of Superior and St. Croix Railroad Company. Northern Pacific is the successor to the Northern Pacific Railroad Company, which was chartered by a special act of Congress on July 2, 1864. In 1896 Northern Pacific acquired the properties of the Northern Pacific Railroad Company. Since that time Northern Pacific has engaged as a common carrier in the business of transporting passengers and freight in interstate commerce. It is found and transacts business in this District. (Complaint, Par. 7; Par. 2; Answer, Par. 3, 1).

2. Defendant Northwestern Improvement Company (Northwestern) is a Delaware corporation and a wholly-owned subsidiary of Northern Pacific. In 1942 it became the successor in interest to a wholly-owned subsidiary of Northern Pacific, which was incorporated in New Jersey in 1897, under the name of Northwestern Improvement Company. Defendant Northwestern sells, leases and manages certain lands acquired from Northern Pacific. It is [fol. 239] found and transacts business in this District. (Complaint, Par. 8; Par. 2; Answer, Par. 3, 1).

II. Nature of Interstate Trade and Commerce Involved

3. The Northern Pacific Railroad Company, the predecessor of Northern Pacific (hereinafter referred to as the Railroad Company), was a land grant railroad, which was chartered by Congress in 1864 to construct a railroad from Lake Superior to Puget Sound with a branch by way of the Columbia River to Portland, Oregon. In aid of this construction, a land grant was made to the Railroad Company by the Act of Congress of July 2, 1864. This grant consisted of every alternate section of public land, not mineral, in the amount of twenty sections per mile through territories and ten sections per mile through states on each side of the railroad line to be erected between Lake Superior and Puget Sound. The Railroad Company was privileged to select in lieu of the granted lands which should be found to have been previously granted, sold or occupied, alternate odd-numbered sections located not more than ten miles beyond the limits of the original grant. In lieu of mineral lands, the Railroad Company was privileged to select land suitable for agricultural purposes, provided land so selected was located within fifty miles of the railroad line. (Complaint, Par. 9; Answer, Par. 4).

4. By an Act of Congress of May 31, 1870 the Railroad Company was authorized to construct the main line by way of the Columbia River to Puget Sound, and a branch across the Cascade Mountains to Puget Sound. By the Act of Congress of May 31, 1870, Congress made an additional grant of land to the Railroad Company in connection with the construction of the line between Portland, Oregon, [fol. 240] and Puget Sound. This grant was upon the same terms as the original grant made in 1864. The Acts of 1864 and 1870 also granted the Railroad Company a right-of-way over public lands of two hundred feet in width on each side of the definite location of the railroad line. (Complaint, Par. 10; Answer, Par. 4).

5. The Railroad Company completed its line between Lake Superior and Puget Sound in August 1883. Northern Pacific now operates and controls a total of 6,888.6 miles of railroad within the States of Wisconsin, Minnesota,

North Dakota, Montana, Idaho, Washington and Oregon. The lines of Northern Pacific are substantially paralleled by the later constructed lines of the Great Northern Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. (Complaint, Par. 11; Answer, Par. 5).

6. Under the land grants made by Congress Northern Pacific received 39,494,391 acres of land, of which all but approximately 100,000 acres was located in the states in which its lines now operate. (Complaint, Par. 12; Answer, Par. 6).

7. Prior to the commencement of this action, much of the granted land had been sold. Defendants now own approximately 2,700,000 acres of land exclusive of land for right-of-way purposes. This acreage includes, in addition to land acquired by the Acts of 1864 and 1870, some land acquired by purchase and under other land grant Acts. Approximately 21,000,000 acres of land have been sold by the defendants without reservation of any kind. Of the acreage sold with mineral reservations, over 6,500,000 acres remain subject to such reservation. (Complaint, Par. 12; Answer, Par. 6).

[fol. 241] 8. The lands now owned by the defendants as well as lands formerly owned and sold by them are of different types. Some contain timber, iron ore, coal, oil and gas or other natural resources. Some of the lands have been used for grazing and agriculture, while others have been used for the location of industrial sites of various kinds. (Complaint, Par. 12; Answer, Par. 6).

9. Defendants are and have been engaged in the sale of land and of standing timber and in the leasing of land with rights to remove timber, oil, gas, metals, clay, coal and other natural resources. Defendants are and have been engaged in the leasing of land for grazing purposes pending the sale thereof and for industrial sites. Many of these grazing lands have been under lease for many years. (Complaint, Par. 12; Answer, Par. 6).

10. Defendants customarily include in their lease agreements provisions which require the lessee to make ship-

ments over the lines of Northern Pacific, when reached via its lines and when service and rates are equal. These provisions, commonly known as traffic clauses or preferential routing agreements, have been included in almost all of the leases of land and in some of defendants' deeds of land and contracts relating to the sale of land and of timber. The minimal obligation of all of these traffic clauses requires the grantee or lessee to route over the lines of Northern Pacific shipments of commodities produced by or on the land sold or leased, provided that neither a lower rate nor better service be available from a competing line. A large portion of the shipments of products affected by the traffic clauses has been and is shipped in interstate commerce. (Complaint, Par. 13; Answer, Second Defense; Response and Supplemental Response to Request for Admissions; Stipulation re Sources of Fact Information and Related Matters, Par. 7).

[fol. 242] 11. Many commodities produced on or derived from, or distributed through the use of, lands now or formerly owned by defendants, and many products manufactured from such commodities are sold and shipped in interstate commerce. These commodities include, but are not limited to, timber, lumber, millwork, plywood, pulp wood, paper, coal, oil, gas, metals, minerals, animals and animal products. A variety of manufactured products, machinery, foodstuffs, mining and lumbering equipment and supplies, is shipped in interstate commerce from other states to states in which lands owned and formerly owned by defendants are located. (Complaint, Par. 14; Answer, Par. 8).

12. The defendant Northern Pacific is engaged in the business of transporting commodities and products in interstate commerce, including many of the commodities produced or derived from or distributed through the use of lands now or formerly owned by defendants, and many products manufactured from such commodities. Means of transportation other than the lines of defendant Northern Pacific are available for the transportation of a substantial [fol. 243] part of said commodities and products during all or a part of their interstate shipment, including the railroad lines of the Great Northern Railway Company and

the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, numerous motor freight lines, and steamship lines. (Complaint, Par. 15; Answer, Par. 9).

III. Use of Various Types of Traffic Clauses or Preferential Routing Agreements

A. Traffic Clauses Contained in Grazing Leases

13. Defendants' grazing leases contain a traffic clause providing in substance that the lessee shall ship over the lines of Northern Pacific all shipments of livestock, wool, mutton or beef made by or for the lessee, destined for points on the lines of Northern Pacific or its connections, whenever its freight rates do not exceed the rates of other lines. (Answer, page 8).

14. In 1949 there were over 1,000 grazing leases containing such a traffic clause in effect, covering more than 1,000,000 acres of land. (Request for Admission IV; Response to Request for Admission IV).

B. Traffic Clauses Contained in Oil and Gas Leases

15. Defendants' usual form of oil and gas lease contains a traffic clause providing in substance that the lessee shall ship over such railroad line as Northern Pacific may designate all products obtained from the leased premises, as well as from adjacent lands then or thereafter controlled by the lessee, or manufactures from said products insofar as such products or manufactures are destined for rail shipment, as well as all incoming freight destined for use in the general territory of which the leased premises are a part, provided that the rates and service of the designated line shall equal those of any competing line. (Answer, page 8).

16. Defendants' usual form of oil and gas lease also provides that all oil controlled by the lessee produced from the [fol. 244] leased premises and from other lands in the oil field of which the leased premises are a part, shall be delivered to a pipeline reaching the rails of Northern Pacific where such a pipeline is available and a price can be ob-

tained for oil so delivered which is at least equal to the price then obtainable for oil produced on the leased premises and delivered to any other pipeline. (Answer, page 8).

17. Defendants' usual form of oil and gas lease also provides that should the lessee decide to construct or cause others to construct a refinery to refine the oil from the field of which the leased premises are a part, the refinery shall be located at some point on Northern Pacific's lines, provided such construction is as economical and feasible as construction on the lines of any other railroad company, and all of the products of the refinery shall be shipped over the lines of Northern Pacific and its connections provided rates and service shall equal those of any competing line, and the lessor shall have the preference right to purchase at market price all fuel oil offered for sale. (Answer, page 8).

18. Defendants have granted 50 oil and gas leases which contained one or more of the above described traffic clauses. In 1949 there were at least 19 oil and gas leases containing traffic clauses in effect, covering 135,000 acres of land. (Request for Admission V; Response to Request for Admission V).

C. Traffic Clauses Contained in Leases of Coal Lands

19. Defendants' leases of coal lands generally contain a traffic clause providing that the lessee shall ship over Northern Pacific lines all coal removed from the leased premises, as well as from adjacent lands then or thereafter controlled by the lessee, insofar as such coal is destined for rail shipment, and all incoming freight destined for use in the field of which the leased premises are a part, provided Northern Pacific's rates and service equal those of any competing line. (Answer, page 9).

20. A traffic clause has been contained in 111 of defend- [fol. 245] ants' leases of coal lands. At least 12 coal leases containing a traffic clause were in effect in 1949. (Request for Admission VI and Appendix VI; Response to Request for Admission VI; Supplemental Response to Request for Admission VI).

D. Traffic Clauses Contained in Leases of Land for the Removal of Iron Ore

21. Defendant's leases of land for the removal of iron ore generally contain a traffic clause providing in substance that the lessee, his successors and assigns shall ship over such line as Northern Pacific may designate all iron ore mined and shipped from the leased premises, as well as all treated products and concentrates mined from the leased premises, provided that rates, service and facilities equal those of any competing line. (Answer, page 9).

22. Defendants have granted 30 iron ore leases containing traffic clauses covering substantially 6,461 acres of land. In 1949 there were at least 16 leases of iron ore land containing such traffic clauses in effect, covering 5,261 acres of land. (Request for Admission VII; Response to Request for Admission VII).

E. Traffic Clauses Contained in Mineral Land Leases

23. Defendants' leases of mineral land for removal of minerals other than coal or petroleum contain a traffic clause which in substance requires the lessees to ship the particular mineral involved over the lines of Northern Pacific if rates, and in some instances service or facilities of Northern Pacific are equal to those of other lines. Some of the mineral land traffic clauses require the lessee to ship over Northern Pacific's lines products manufactured from the mineral removed from the land or minerals removed from adjacent lands then or thereafter controlled by the lessee. A number of the mineral land leases provide that the traffic clause shall be binding upon the lessee's successors and assigns. (Request for Admission III; Response to Request for Admission III; Supplemental Response to Request for Admission III, Exhibit C, and Appendix, pp. 37-43).

[fol. 246] 24. Defendants have granted 63 leases of mineral land containing traffic clauses, covering 42,466 acres of land. In 1949 there were at least 17 mineral land leases containing traffic clauses in effect, covering 6,810 acres of land. (Request for Admission III; Supplemental Response to Request for Admission III and Exhibit C).

F. Traffic Clauses Contained in Deeds and Contracts Relating to the Sale of Timberland

25. Defendants' contracts relating to sales of timberlands have contained a traffic clause requiring in substance that, rates being equal, the grantees and in some instances successors and assigns shall ship over the lines of Northern Pacific all logs, poles, lumber and other products manufactured from timber cut from the lands, and in some instances from other lands in the vicinity which the purchaser at any time may control, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by the sale. Where the point of destination of the manufactured product is not on Northern Pacific lines, the purchaser is required to route shipments so as to give Northern Pacific the longest haul if the expense to the purchaser is not increased over the cost of shipment over another rail line. In some instances, the purchaser has been required to offer to sell the logs and poles produced from the sold lands to such companies as will agree to ship via Northern Pacific if rates are equal. (Request for Admission I; Response to Request for Admission I and Exhibit A; Supplemental Response to Request for Admission I and Appendix pp. 1-36; Answer, page 10).

26. Defendants' sales of timberland generally have been conditioned upon a provision that the purchaser shall make monthly reports to Northern Pacific of shipments under the traffic clause provision and shall permit Northern Pacific to examine its records for the purpose of verifying the reports. (Request for Admission I; Response to Request for Admission I; Supplemental Response to Request for Admission I; Answer, page 10).

[fol. 247] 27. Out of 75 of defendants' contracts for the sale of timberland involving approximately 2,144,177 acres containing approximately 21,554,766,000 board feet of timber, at least 73 contracts covering 2,144,137 acres and containing 21,553,762,000 board feet of timber were subject to traffic clauses. (Request for Admission I; Response to Request for Admission I and Exhibit A; Supplemental Response to Request for Admission I and Appendix, pp. 1-36).

G. Traffic Clauses Contained in Timber Sale Contracts

28. Defendants' timber sale contracts generally contain a traffic clause providing in substance that, rates being equal, the purchaser, and in some instances successors and assigns, shall ship over Northern Pacific lines all logs, poles, lumber and other products manufactured from the timber cut under the contract, or an equivalent quantity of lumber and other products manufactured from timber cut from lands not covered by the contract. Where the point of destination of the manufactured product is not on Northern Pacific lines, the purchaser is required to route shipments so as to give Northern Pacific the longest haul if expense to the shipper is not increased above the cost of shipment over another rail line. (Answer, page 10; Request for Admission 11; Supplemental Response to Request for Admission 11).

29. Defendants' timber sale contracts generally contain a provision that the purchaser shall make monthly reports to Northern Pacific of shipments under the traffic clause provision and shall permit Northern Pacific to examine its records for the purpose of verifying the reports. (Answer, page 10).

30. Out of 210 timber sale contracts involving 394,135 acres of land and more than 6,000,000,000 board feet of timber, at least 199 of such contracts included traffic clauses. In 1949 there were 31 timber sales contracts having traffic clauses in effect, covering 100,585 acres and 1,491,895,995 board feet of timber. (Request for Admission 11; Response to Request for Admission 11 and Exhibit B; Supplemental Response to Request for Admission 11 and Appendix, pp. 1-36).

[fol. 248] H. Traffic Clauses Contained in Industrial Leases Including Grain Elevator and Grain Warehouse Leases

31. Defendants at the time of suit had in effect 8,000 leases of sites used for various commercial and industrial purposes. All but about 400 of defendants' 8,000 industrial leases (other than grain elevator and grain warehouse

leases) contain a traffic clause providing that rates being as favorable, the lessee shall do all transportation business over the lines of Northern Pacific. (Answer, page 12; Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

32. Of defendants' 8,000 industrial leases, 939 are for grain elevator and grain warehouse purposes. All of such grain elevator and grain warehouse leases contain a clause providing in substance that Northern Pacific shall have the exclusive right to carry all grain to be transported from the grain elevator. (Answer, page 13; Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

33. Northern Pacific is a party to certain contracts with other railway companies which provide for joint operation of its lines of railway. There are 366 industrial leases in effect covering properties on the right-of-way for such lines of railway. Each of these industrial leases contains a traffic clause providing that, rates being as favorable, the lessee will do all transportation business over the lines of Northern Pacific. The lessees of these industrial sites affected by the joint operation agreements have been notified that the traffic clause is not effective against the joint operating railroad. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

34. In July 1913 all industrial leases of Northern Pacific's right-of-way between South Tacoma and Vancouver, Washington were cancelled and revised leases not containing any traffic clauses were substituted. No traffic [fol. 249] clause has been incorporated in such industrial lease since 1913. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

35. At the request of certain lessees, no traffic clause was incorporated in 390 industrial leases in effect at the commencement of suit. (Stipulation filed May 16, 1950 re leases entered into by Industrial Development Department of Northern Pacific).

IV. CONCLUSORY FINDINGS

36. The actual and potential commerce involved in defendants' traffic clauses or preferential routing agreements is very substantial. The amount of commerce in transportation involved by each of the categories of traffic clauses is not inconsequential or insubstantial.

37. Defendants, as sellers and as lessors, by reason of title in fee simple, have dominance in the lands now owned by them and had dominance in the lands formerly owned at the time of sale of such lands.

38. Defendants have used their dominance in the lands sold and leased to require purchasers and lessees to purchase and use Northern Pacific's transportation service, under the conditions stated in finding 10.

39. The traffic clauses contained in defendants' leases and the traffic clauses employed in connection with the sales of timberland and timber prohibit lessees, grantees and purchasers of Northern Pacific lands and timber from exercising a free choice in the selection of transportation routing in the shipment of commodities to and from the leased and sold lands, and from the land on which the timber sold under the timber sale contracts is located, under the conditions stated in finding 10.

[fol. 250]

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the defendants.

2. There is no genuine issue as to any material fact with respect to any of defendants' traffic clauses except those contained in defendants' leases of land for use as industrial sites or for grain elevator or grain warehouse purposes.

3. For many years the defendants have been parties to contracts, agreements, arrangements and understandings in unreasonable restraint of commerce in the transportation of commodities by rail, truck and steamship lines, all in violation of Section 1 of the Sherman Act.

4. The amount of interstate trade and commerce which is restrained by the illegal contracts to which defendants are parties is substantial.

5. The plaintiff is entitled to judgment as a matter of law with respect to all of defendants' contracts and leases other than industrial leases.

Geo. H. Boldt, United States District Judge.

Dated: August 31, 1956.

[fol. 251] Presented by: Margaret H. Brass, Attorney, Department of Justice.

Approved as to form: Harold G. Boggs, Of Counsel for Defendants.

[fol. 252] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

[Title omitted]

TRANSCRIPT OF COURT'S ORAL DECISION DENYING MOTION FOR RECONSIDERATION—September 22, 1956

Transcript of Court's Oral Decision denying motion for reconsideration held in the above-entitled and numbered cause in the above-entitled court before the Honorable George H. Boldt, United States District Judge, on Friday, August 31, 1956, at Seattle, Washington.

APPEARANCES

On behalf of the Plaintiff: Miss Margaret Brass, Attorney at Law, Department of Justice, Washington, D. C.

On behalf of the Defendants: Mr. Dean H. Eastman, and Mr. Harold G. Boggs, Attorneys at Law, 909 Smith Tower Building, Seattle, Washington.

Mr. M. B. Countryman, Jr., General Counsel for Northern Pacific Railroad, St. Paul, Minnesota.

[fol. 253] The Court: Mr. Boggs, I have been listening very attentively, first, to be certain that I understand your proposition, and, secondly, to be certain that your proposition was fully and thoroughly considered before I made this decision, and I am going to answer both in the affirmative.

I think I do understand your proposition and I gave it full thought, much mental or figurative sweat, if not tears, in arriving at my conclusions about it. I am going to deprive myself of the pleasure of having Miss Brass address me on this because I am so thoroughly satisfied that your contentions were thoroughly and fairly and fully considered, as far as my humble talents would permit of it, before I entered into this decision.

Now, I might say that this problem, as most that are presented to me, is not entirely free from doubt, not nearly so as a once written decision sometimes indicates. What we write for posterity sometimes is a little more emphatic than we might genuinely feel.

However, in this instance I have little doubt about it. Where you people differ in your view and Miss Brass's view, in my opinion is at the point of departure. It seems so to me.

If you are right in your view that in a case grounded [fol. 254] on Paragraph 1 of the Sherman Act, monop-ly must be shown and that the term "dominance" and "market" are interchangeable, then my opinion is probably wrong. However, I should point out that if that be true, there would never be any occasion for the doctrine of the ty*p*ing cases because if you were considering an established monop-ly, you wouldn't have to be concerned about what the monopolist did with it. The monop-ly in and of itself would be unlawful, and whether used for ty*p*ing purposes or otherwise would be of no concern.

Mr. Boggs: That contention is answered right in the Dupont case itself.

The Court: Well, let me point out wherein I think the Dupont case does not have the teaching for our case that you suggest.

In the first place, the Dupont case was grounded on Section 2 exclusively and has no necessary relationship to Section 1 at all.

Secondly, it was not contended or asserted in that case that there was any tying arrangement, and neither the tying cases nor typing principles are cited or even discussed in that opinion.

Thirdly, the majority opinion itself and Justice Frankfurter's opinion both allude to the fact that very different considerations are involved when you are dealing with [fol. 255] Paragraph 1 rather than Paragraph 2 of the Sherman Act.

Justice Frankfurter says Sections 1 and 2, of course, implicate different considerations, and in the majority opinion, at the very beginning of it in stating the proposition for consideration, they say, "Market limitation is necessary under Dupont's theory to determine whether an alleged monop-ly violates Section 2. The ultimate consideration in such a determination is whether the defendant controlled the price and competition in the market for such trade or business as they are charged with monopolizing."

Now, the plain language of the Sherman Act, granting that it hasn't been seen to be so plain until recent times, makes a restraint of trade under Paragraph 1, illegal. It doesn't say anything about monop-ly.

Now, it has been construed, and I think rightly so, to mean that the restraint must tend towards monop-ly, but the Supreme Court has not in any case said that monop-ly is a requisite under Paragraph 1.

Now, the paragraph that deals with monop-ly, as such, is Paragraph 2 of the Act.

Your suggestion that the two are interchangeable, I cannot go along with. I cannot agree to that. It may be that you are right and I am wrong. I don't think so, but [fol. 256] the Supreme Court may hold otherwise.

Now, in the cases, at least until later times, there has been a regrettable confusion of terms, confusion of the two sections. Often they are referred to loosely in such a manner that it takes a very, very careful reading to comprehend which section is involved.

For example, in Times-Picayune, looking back over that opinion, after all the thought and effort I have given to it, I can see both sections involved, both 1 and 2. They found against Section 2 because there was no monop-ly for the reasons they outlined. They found against Section 1 because the tied commodity was not a separate and distinct commodity, and they said so, although it is not spelled out quite as directly or briefly and precisely as I have tried to do in my opinion.

Now, in my judgment that is what is involved in Times-Picayune. That is what I meant by the footnote in my written decision.. I was a little hesitant about putting that footnote in because there are other considerations that might perhaps enter into it. However, I finally put it in simply to illustrate a very narrow facet of the matter, and I am afraid that I haven't done it well from the fact that you misinterpreted the purpose of it. It still is a foot- [fol. 257] note, and rarely do footnotes become very au-thori-tive, so I am leaving it in.

Now, the Dupont case, in my judgment, has no bearing on our case at all.

Times-Picayune does insofar as it treats Section 1 and as I tried to point out in my opinion, rather briefly it is true, but that is no fault in opinions if they are clear, that the gravamen of the decision found that the second alleged tying product was not a separate and distinct commodity, and, accordingly, the typing principles were not applicable. At least that is the way I construe it.

I will agree that many times opinions take a great deal of reading and re-reading, and, unfortunately, at times language is used that is not easy to apply to other cases.

In any event, I am afraid you cannot pursuade me that your view is correct and the one expressed in the opinion is wrong, and I think I will have to deny the motion for reconsideration.

Do you feel I have given you a fair opportunity to present your argument?

Mr. Boggs: I wouldn't mind, however, making a comment or two on some of your Honor's remarks. First, that if there is monop-ly, that ends it in all cases. There may [fol. 258] be legal monop-lies and that is recognized in the Dupont case. It says, "Two questions raised at the record and decided by the Court below, the Court found that even if Dupont did possess monop-ly power over sales of cellophane, it was not subject to the Sherman Act of prosecution because, 1, the acquisition of that power was protected by patents; 2, that power was acquired solely through Dupont's expertness."

Now, you recall in the Aluminum case, Judge Learned Hand said that monop-ly may be thrust upon you and that it was not the purpose of the anti-trust laws to discourage what in the end is the aim of everyone who competes is to get the mostest.

The Court: I have that in mind.

Mr. Boggs: So that I can't agree that it would not be possible to have a violation under Section 1 merely because you happen to have what the Court might call a monop-ly. It might be a perfectly legal monop-ly.

Now, the second comment I wish to make is that I find it difficult to understand, I am not trading on words, we are talking about monop-ly, dominance, no matter how you may describe it, but in both cases the Court—that is, I am speaking now of the Times-Picayune case treating as tying contract and granting that there was this other [fol. 259] ground, and also the Section 2 ground that it was talking about Section 1, that in determining whether there was this power, this power which was a necessity in the process of determining the legality or illegality, they used exactly the same process, determining relevant market and your place in it.

Now, those are the two comments I have on your reasoning.

The Court: I cannot agree that the market dominance of a particular tying produce required under the typing doctrine, and monop-ly of the market as required for violation of Section 2 of the Sherman Act, are one and the same thing.

They have comparable elements that are to be considered, but I think you could have market dominance of a particular product and only a very small share of the whole market in that type of product.

Mr. Boggs: That might be true.

The Court: If you use market dominance over that particular product to force purchase of other tied products and there is a substantial volume of such restraint of trade, it is taboo.

Mr. Boggs: I would like to ask one more question which I would like to get clear also. When you say you are [fol. 260] dominant in that product, in the arriving at that dominance, don't you think that you have to consider the relationship of that product with other competing products?

The Court: In some cases you would, in others you wouldn't. If the facts show that you have absolute fee simple title over vast quantities of land, that shows the dominance right there. There isn't any further need be shown because you had absolute market control even more unlimited in some respects than the patent holder.

Mr. Boggs: I just wanted to understand you.

The Court: We see, I think, each other's point of view. Unfortunately, we don't agree, and it may well be that you will turn out to be right and I am wrong. However, it certainly illustrates to my mind the wisdom of presenting all these basic issues clearly on motion for summary judgment without taking many long weeks and a vast amount of testimony when we can't agree as to what the criteria are on which we are to determine the case.

Mr. Boggs: I want to thank you, your Honor.

The Court: You may enter a minute order denying the motion for reconsideration.

[fol. 262] [File endorsement omitted]

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

Civil Action No. 2277

UNITED STATES OF AMERICA, Plaintiff,

v.

NORTHERN PACIFIC RAILWAY COMPANY and NORTHWESTERN IMPROVEMENT COMPANY, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed October 23, 1956

I. Notice is hereby given that the Northern Pacific Railway Company and Northwestern Improvement Company, the defendants above named, hereby appeal to the Supreme Court of the United States from the Partial Final Judgment dated and entered in this action on August 31, 1956.

This appeal is taken pursuant to Title 15, U.S.C., Section 29.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint.
2. Answer of Defendants, Northern Pacific Railway Company and Northwestern Improvement Company.
3. Plaintiff's Request for Admissions under Rule 36.
4. Defendants' Response to Plaintiff's Request for Admissions under Rule 36.

[fol. 263] 5. Stipulation of September 18, 1951, for taking deposition of John M. Hughes.

6. Stipulation dated November 21, 1952, re Sources of Fact Information and Related Matters.
7. Order entered November 22, 1952, approving Stipulation re Sources of Fact Information and Related Matters.
8. Supplemental Response to Plaintiff's Request for Admissions under Rule 36.
9. Plaintiff's Motion for Summary Judgment, dated July 31, 1953.
10. Stipulation dated July 6, 1954, re Taking Depositions of Various Witnesses.
11. Stipulation as to Use of Copies in Lieu of Original Documents; as to Certain Information in Connection With Industrial Leases and Grazing Leases, dated July 6, 1954.
12. Affidavit of R. G. Lindgren, dated September 29, 1954.

13. Depositions of the following witnesses:

    J. M. Hughes
    Virgil O. McWhorter
    Alex Dunnitt
    Armand D. Olson
    Russell Brown
    Derwin F. Lang
    Howard Raser
    Peter Pauly
    Frank Carey
    Ralph Miracle
    E. A. Phillips
    Everett E. Shuey
    Wm. Magelsen
    George Davidson
    M. C. Simpson
    Susan Haughian
    A. W. Bradshaw
    C. A. Mallett
    W. R. Woodson
    Geo. M. Williamson
    Wallace Ulmer
    W. E. Husband
    Henry Berg
    James G. Woodworth

14. Decision on Motion for Summary Judgment, dated June 23, 1956.

15. Defendants' Motion for Reargument and Reconsideration.

16. Transcript of oral decision denying motion for reconsideration.

17. Findings of Fact and Conclusions of Law.

18. Partial Final Judgment entered August 31, 1956.

[fol. 264] 19. Stay of Judgment entered September 5, 1956.

20. Supersedeas Bond.

III. The following questions are presented by this appeal:

1. Whether (except in the case of leases of industrial sites on lands held for transportation purposes) agreements which a railroad company and its subsidiary land company customarily include in contracts for the sale of their timber lands or timber and in leases of their lands for grazing purposes or for removal of coal, oil, gas or other natural resources, that the purchaser or lessee will ship over the lines of the railroad company, where the destination can be reached via its lines, all resulting traffic, provided its rates

and service are equal to those of any competing line, are per se unreasonable restraints of commerce in transportation in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C., §1) where in consequence of Government land grants in aid of construction of the railroad the companies own lands and reserved mineral rights aggregating several million acres scattered through six States and the actual or potential interstate commerce in transportation of commodities from the properties subject to such agreements is substantial but there is no evidence that the companies have any monopoly of any type of lands or timber or other natural resources in any area or that they have any monopoly power or dominance over any market for lands or timber or other natural resources of any kind.

[fol. 265] 2. Whether in such a case issues of fact raised by the pleadings as to the economic consequences of said agreements, their effects upon purchasers and lessees, their effects upon competition, and their reasonableness under all the circumstances, constitute material issues of fact for trial.

M. L. Countryman, Jr., Dean H. Eastman, Roscoe Krier, Harold G. Boggs, Attorneys for Northern Pacific Railway Company and Northwestern Improvement Company, Address: 909 Smith Tower, Seattle 4, Washington.

Proof of Service (omitted in printing).

[fol. 271] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. 274] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—January 21, 1957

APPEAL from the United States District Court for the Western District of Washington.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

January 21, 1957

Mr. Justice Clark took no part in the consideration or decision of this application.